CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70317 of 2026

(Arising out of Order-in-Appeal No.124-CUS/APPL/LKO/2022 dated 22/02/2022 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Ashtvinayak and Company,
Through Prop. Gaurav Shukla, **.....Appellant**
(17/06, Indiranagar, Munshipulia, Lucknow)

VERSUS

Commissioner of Customs (Preventive), Lucknow

....Respondent

(Commissionerate, Lucknow)

APPEARANCE:

Shri Anuj Agarwal, Advocate for the Appellant
Shri Abhishek Mukharjee, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70364/2026

DATE OF HEARING : 08 September, 2026
DATE OF DECISION : 10 September, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.124-CUS/APPL/LKO/2022 dated 22/02/2022 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order, Commissioner (Appeals) has upheld the Order-in-Original No.09/JC/2021-22 dated 27.05.2021 wherein following has been held:-

"ORDER

(i) I order for absolute confiscation of the seized undeclared branded clothes valuing Rs 4,21,850/ as

mentioned in the List, (C) of SCN (excluding the goods mentioned at Sl. No. 2, 6, 20, 21 & 29 of the list) under Section 111(d) of the Customs Act, 1962.

(ii) I order for absolute confiscation of the seized undeclared branded clothes valuing Rs. 6,98,570/- mentioned at Sl No. 2, 6, 20, 21 & 29 in the List (C) of SCN under Section 111(f), 111(i), 111(1), 111(m) of the Customs Act, 1962.

(iii) I order for confiscation of the seized undeclared clothes valued at Rs 76,361/-mentioned in the List (B) of SCN under Section 111(1), 111(i), 111(1), 111(m) of the Customs Act, 1962. However, I give an option for redemption of said garments to its lawful owner as envisaged under Section 125 of the Customs Act, 1962 on payment of redemption fine Rs 11500/- along with applicable rate of Customs duty leviable thereon within the time as stipulated under Section 125(3) of the Customs Act, 1962, in lieu of the confiscated foreign origin garments valued at Rs.76,361/-. The cash security deposited by the noticee at the time of provisional release of goods can be appropriated against redemption fine imposed as above under Section 125 of the Act.

(iv) 1 order for confiscation of the seized declared clothes valued at Rs. 5,58,126/- mentioned in the List (B) of SCN under Section 118 of the Customs Act, 1962. However, I give an option for redemption of said garments to its lawful owner as envisaged under Section 125 of the Customs Act, 1962 on payment of redemption fine Rs 85,000/- along with applicable rate of Customs duty leviable thereon, within the time as stipulated under Section 125(3) of the Customs Act, 1962, in lieu of the confiscated foreign origin garments valued at Rs. 5,58,126/-. The cash security deposited by the noticee at the time of provisional release of the goods can be appropriated against redemption fine imposed as above under Section 125 of the Act. Duty

already paid by the noticee may be adjusted against total Customs duty liability.

(v) I impose penalty of Rs 4,00,000/- (Rs. Four lakh only) under Section 112(a) & 112(b) of the Customs Act, 1962 on the Noticee M/s Ashthvinayak & Co., Lucknow."

2.1 Appellant having IEC No.0610004026 had filed Bill of Entry No. 4699807 dated 30.08.2019 with the customs for clearance of goods contained in 32 packages brought by them under Airway Bill No.065-33160713 dated 27.08.2019 from Guangzhou, China, for home consumption. These goods have been supplied by M/s. Nand Enterprise Co. Ltd., Room No. 909, Wayson Commercial Building, 28 Connaught Road, West Sheung Wan, Hong Kong, China under Invoice No. LK003060 dated 27.08.2019.

2.2 The said Bill of Entry was assessed on value as declared by the appellant for value Rs.5,51,179/- and Customs duty of Rs.1,95,556/ (Rs.1,59,167/-+IGST-Rs.36,389/-) by the proper officer. After deposit of the customs duty, they were presented by thee importer for examination by the Customs on 02.09.2019. During the course of examination of the randomly selected packages, in presence of the importer Shri Gaurav Shukla, Proprietor of appellant, the goods contained in the packages were not found in consonance with the declaration made by the importer in the packing list dated 27.08.2019 appended with the Bill of Entry. Therefore, 100% examination of the consignments was directed. The importer was directed to be present on the next date i.e. 03.09.2019 for 100% examination of the consignment, but the importer, vide his letter dated 02.09.2019 informed that he would not be available for examination from 03.09.2019 to 08.09.2019 due to Ganesh Utsav celebration at his home. He requested for 100% examination on 09.09.2019.

2.3 Accordingly, 100% examination of the consignment was done on 09.09.2019 in presence of two independent witnesses and representative of Custodian (AAICLASS, Airport Authority off India, CCSI Airport, Lucknow) and the importer.

2.4 On physical examination of the goods as detailed in table below, it was found in the package that the goods were grossly mis-declared, they were put under seizure as per Panchnama/recovery memo dated 09.09.2019:-

Package wise list of Goods Seized

Sr. No.	Pkg. No. as per packing list	Items found to be contained in the packet after 100% examination	Declared by the Importer as per packing list	Goods found (in unit) after 100% examination
1	GO24	Girls Top	150	150
2	GO24	Ladies Jacket	100	100
3	GO25	Girls Top	170	185
4	GO25	Hoody Jacket	0	54
5	GO25	Ladies Jacket	0	10
6	GO26	Girls Top	180	195
7	GO26	Ladies Middy	10	20
8	GO27	Girls Top	150	205
9	GO28	Girls Top	180	84
10	GO28	Girls Top (Brand -Gucci)	0	119
11	GO28	Ladies Jacket	24	0
12	GS 54	Girls Top	180	230
13	GS 55	Girls Top	175	223
14	MJ93	Baby Top	306	450
15	MJ94	Baby Top	218	218
16	MJ94	Kids Pant	0	96
17	MJ95	Baby Romper	0	40
18	MJ95	Baby Top	40	24

19	MJ95	Cap	7KG	73 nos.
20	MJ95	Cap (Brand - GAP)	0	55
21	MJ95	Kids Frock	70	100
22	MJ95	Kids pant	64	94
23	MJ96	Baby Top	131	35
24	MJ96	Kids Jacket (Brand - ADIDAS)	0	36
25	MJ96	Kids Jacket	82	24
26	MJ96	Kids Jacket (Brand - Gucci)	0	6
27	MJ96	Kids pant	60	80
28	MJ96	Kids set	0	18
29	MJ96	Kids set (Brand - Louis Vuitton)	0	24
30	MJ96	Kids set (Brand - Under Armour)	0	9
31	MJ96	Skirts	0	40
32	MJ97	Baby 2pc Set	0	33
33	MJ97	Baby 2pc Set	0	35
34	MJ97	Baby Top	132	78
35	MJ97	Kids pant	87	82
36	MJ97	Kids Shorts	78	0
37	MJ97	Mens 2pc Sportswear (Brand - ADIDAS)	0	56
38	MJ97	Mens 2pc Sportswear (Brand - NIKE)	0	8
39	PNB 10	Kids Set	135	135
40	PNB 11	Kids Set	214	214
41	PNB 12	Kids Set	131	163
42	PNB 13	Belt	5KG	3 nos
43	PNB 13	Belt (Brand-Gucci)	0	6 nos
44	PNB 13	Mens Shirt (Brand -Gucci)	0	9
45	PNB 13	Mens Shirt (Brand-Burberry)	0	9
46	PNB 13	Mens Trouser (Brand-Burberry)	0	12
47	PNB 13	Mens Trouser	18	6
48	PNB 13	Mens T-Shirt	6	6
49	PNB 9	Baby Jacket	0	12
50	PNB 9	Baby Top	0	80
51	PNB 9	Girls Hoody Jacket	0	35
52	PNB 9	Kids Hoody Jacket	0	11
53	PNB 9	Kids Pant	0	12
54	PNB 9	Kids T-Shirt	162	10
55	PNB1	Baby Top	70	103
56	PNB1	Baby Hoody Jacket (Brand- Burberry)	0	6
57	PNB1	Kids Pant (Brand-Burberry)	0	6
58	PNB1	Bag	28	28
59	PNB1	Kids Frock	0	53
60	PNB1	Kids pant (Brand - ADIDAS)	0	25
61	PNB1	Kids pant (Brand - NIKE)	0	15
62	PNB1	Kids pant	88	6

63	PNB1	Scarf	53	0
64	PNB2	Baby Top	105	38
65	PNB2	Baby Frock	0	10
66	PNB2	Kids Jacket	60	67
67	PNB2	Kids Pant	55	74
68	PNB2	Skirts	0	29
69	PNB3	Baby Top	100	77
70	PNB3	Bag	18	18
71	PNB3	Kids Pant (Brand - ADIDAS)	0	4
72	PNB3	Kids Pant (Brand - Nike)	0	4
73	PNB3	Kids Pant (Brand - Under Armour)	0	4
74	PNB3	Kids Pant	54	32
75	PNB3	Hoody Jacket	0	28
76	PNB3	Hoody Jacket (Brand - Adidas)	0	4
77	PNB4	Baby Top	180	5
78	PNB4	Kids Top (Brand - GAP)	0	25
79	PNB4	Kids Hoody jacket (Brand - Nike)	0	10
80	PNB4	Kids Pant (Brand - Nike)	0	25
81	PNB4	Kids Pant (Brand - ADIDAS)	0	30
82	PNB4	Kids 2pc Set (Brand - GAP)	0	56
83	PNB4	Kids Set	0	13
84	PNB4	Mens T-shirt (Brand - Adidas)	0	10
85	PNB4	Mens Hoody Jacket (Brand - Adidas)	0	5
86	PNB5	Baby Top	155	66
87	PNB5	Kids bag/pouches	0	84
88	PNB5	Hoody Jacket	0	25
89	PNB5	Kids Pant	0	10
90	PNB5	Mens T-Shirt	0	10
91	PNB5	Sunglasses	135	0
92	PNB6	Baby Top	119	42
93	PNB6	Kids Pant	36	35
94	PNB6	Kids Set	0	94
95	PNB6	Sunglasses	135	125
96	PNB7	Mens Shirt	0	16
97	PNB7	Mens Trouser (Brand - Louis Vuitton)	0	16
98	PNB7	Mens Trouser	96	47
99	PNB7	Mens Trouser (Brand - Diesel DNA)	0	33
100	PNB7	Mens T-Shirt	16	0
101	PNB8	Belt (Brand- Burberry)	0	2
102	PNB8	Belt (Brand - Salvatore Ferragamo)	0	16
103	PNB8	Belt (Brand - Hermes Paris)	0	2
104	PNB8	Belt	8KG	0
105	PNB8	Mens Trouser (Brand -	0	20

		Nike)		
106	PNB8	Mens Trouser (Brand - Adidas)	0	15
107	PNB8	Mens Trouser (Brand - Under Armour)	0	5
108	PNB8	Mens Trouser	26	6
109	PNB8	Mens T-Shirt (Brand- Hugo Boss)	0	12
110	PNB8	Mens T-Shirt (Brand- Burberry)	0	11
111	PNB8	Mens T-Shirt (Brand - Gucci)	0	12
112	PNB8	Mens T-Shirt (Brand - Armani)	0	12
113	PNB8	Mens Shirt (Brand - Armani)	0	9
114	PNB8	Mens T-Shirt	36	0
115	RC52	Baby top	162	162
116	RC53	Kids Set (Brand - GAP)	0	125
117	RC53	Kids Set (Brand - Adidas)	0	60
118	RC53	Kids Set	185	0
119	RK110	Girls Top	120	110
120	RK111	Ladies Middy	105	120
121	RK112	Ladies Middy	70	90
122	RK113	Girls Top	250	350
123	RK114	Baby Romper	0	48
124	RK114	Baby Top	48	0
125	RK114	Girls Top	49	0
126	RK114	Jump Suit	0	55
		Total		6667

2.5 Shri Gaurav Shukla, proprietor of M/s Ashthvinayak & Co. Munshipulia, Lucknow, in his statement recorded on 11.09.2019 under Section 108 of the Customs Act, 1962 stated that:-

- he has been involved in business of the trading of imported garments, fabric and garment accessories since the Year, 2011;
- he imports readymade garments and accessories from M/s. Nand Enterprize Co Ltd. Room No-909, Wayson Commercial Building, 28 Connaught Road, West Sheung Wan, Hong Kong, China;
- They had not procured any goods from the domestic market;
- Either he himself or any representative not visited China for union with the supplier regarding purchase and price of the import commodities.
- he did not have any contact number of both of his suppliers in China. He places order to the supplier abroad

as per his requirements, through e-mail as he communicates them through their e-mail only.

- He used to import the goods from ports -ICD JRY Kanpur & ICD Panki, Kanpur also.
- He admits the fact that during the examination on 02.09.2019 and on 09.09.2019 variation in quantity and descriptions in the goods alongwith presence of un-declared goods in the randomly selected package were found and put under seizure.
- In respect of the branded goods of brand Adidas, Nike, Louis Vuittton, Burberry, Gucci, Under Armour, Armani, Diesel DNA, GAP and Hugo Boss etc. which was concealed in between the declared goods, he didn't have any knowledge as to how these items were found in the bags as he had not placed any order to his suppliers for such types of branded goods.
- He did not have any NOC from the brand owners of the said branded goods and he had placed order only for the unbranded readymade garments and accessories. Only those goods as mentioned in the Invoice submitted with said Bill of Entry were ordered by him to be supplied by M/s Nand Enterprise Company Ltd, China. It might be due to the packing mistake made by the supplier.
- As he has not placed any order, he was not aware to the purchase price of undeclared goods and he had not made any payment to the supplier against the goods brought/imported into India.

2.6 Shri Gaurav Shukla vide his letter dated 16.09.2019 provided a copy of sale contract dated 22.08.2019 with M/s Nand Enterprise Company Ltd, China and failed to provide copy of the mail under which the said order was sent to the foreign supplier. The said sale order was only afterthought defense practice on the part of the importer. He has ordered only those goods as mentioned in the invoice.

2.7 The appellant filed a letter dated 12.09.2019 requested for provisional release of the goods mentioned in the list annexed with Panchnama dated 09.09.2019 against which no brand name were mentioned (i.e. the declared/undeclared goods mentioned at Sl. No.1, 2, 4, 5, 6, 7, 8, 13, 15, 16, 18, 20, 22, 23, 24, 26, 29, 34, 40, 41, 42, 46, 50, 57, 63 & 64 of the list annexed to the Panchnama) under Section 110A of the Customs Act, 1962.

2.8 Vide letter dated 27.09.2019 granted permission for provisional release of the said seized goods as requested by the importer against a bond for full value of the seized goods alongwith bank guarantee/cash security @ 10% of the bond value.

2.9 The value of the seized goods was determined as in table below:-

LIST {A}

Goods declared in the BE and found to be contained in the packages:

Sl. No.	Item's description	Quantity	Estimated seizure Value (in INR)
1	Baby Top	1378	1,02,606/-
2	Kid's Jacket	91	12,705/-
3	Kid's set	637	71,147/-
4	Men's T shirt	26	7,316/-
5	Men's Shirt	16	7,531/-
6	Men's trouser	59	21,966/-
7	Sun glasses	125	6,537/-
8	Ladies Jacket	110	25,596/-
9	Bag	46	4,595/-
10	Girl's Top	1732	2,01,565/-
11	Kid's Frock	153	12,816/-
12	Kid's Pant	521	43,643/-
13	*Kid's Short	0	0
14	Ladies Middy	230	38,533/-
15	Belt	1.5 Kgs	428/-
16	Cap	4 Kgs	1,142/-
17	*Scarf	0	0
	TOTAL		5,58,126/-

*Kid's Short & Scarf have been declared in the BE but nothing was stuffed in the pkgs, hence qty is '0'

LIST (B)

un-declared (other than suspected branded/IPR protected goods)

Sl. No.	Item's description	Quantity	Estimated seizure Value (in INR)
1	Baby 2 pc. set	68	7,595/-
2	Baby Frock	10	838/-
3	Baby Jacket	12	1,675/-
4	Baby Romper	88	8,191/-
5	Girls Hoody Jacket	35	8,144/-
6	Hoody Jacket	107	24,898/-
7	Jump Suit	55	9,214/-
8	Kids Bag pouches	84	7,466/-
9	Kids Hoody Jacket	11	2,560/-
10	Skirts	69	5,780/-
Total			76,361/-

LIST (C)

un-declared and suspected branded/IPR protected goods

Sl. No.	Item's description	Quantity	Rate per unit/no	Estimated seizure Value (In INR)
1	Belt (brand Hermis Paris)	2	500	1,000
2	Belt (brand Salvatore Ferragamo)	16	@HKD3980 (1HKD=INR9 approx)	5,73,120
3	Belt (Burberry)	2	@HKD3800 (1HKD=INR9 approx)	68,400
4	Belt (GUCCI)	6	400	2,400
5	Baby Hoody Jacket (Brand Burberry)	6	450	2,700
6	Cap (brand Gap)	55	150	8,250
7	Girl's Top (brand-GUCCI)	119	350	41,650
8	Hoody Jackets(Brand-Adidas)	4	500	2,000
9	Kid's 2pc set (brand Gap)	56	500	28,000
10	Kid's Hoody Jacket (Brand Nike)	10	500	5,000
11	Kids Jacket (Brand- Gucci)	6	550	3,300
12	Kids Jackets (Brand-Adidas)	36	600	21,600
13	Kid's Pant (Brand-Adidas)	59	450	26,550
14	Kid's Pant (Brand-Nike)	44	450	19,800
15	Kid's Pant (Brand- Under Armour)	04	500	2,000
16	Kid's Pant (Brand-Burberry)	06	450	2,700
17	Kid's Set (Brand- Louis Vuitton)	24	600	14,400
18	Kid's Set (Brand-Under Armour)	09	700	6,300
19	Kid's Set (Brand-Adidas)	60	600	36,000
20	Kid's Set (Brand Gap)	125	600	75,000
21	Kid's Top (Brand-Gap)	25	500	12,500
22	Men's 02pc Sportswear (Brand-Adidas)	56	600	33,600
23	Men's 02pc Sportswear (Brand- Nike)	08	600	4,800

24	Men's Hoody Jacket (Brand-Adidas)	05	500	2,500
25	Men's Shirt (Brand -Armani)	09	600	5,400
26	Men's Shirt (Brand-Burberry)	09	550	4,950
27	Men's Shirt (Brand-GUCCI)	09	600	5,400
28	Men's Trouser (Brand-Adidas)	15	700	10,500
29	Men's Trouser (Brand-Diesel DNA)	33	900	29,700
30	Men's Trouser (Brand-Louis Vuitton))	16	900	14,400
31	Men's Trouser (Brand-Nike)	20	800	16,000
32	Men's Trouser (Brand-Under Armour)	05	800	4,000
33	Men's Trouser (Brand-Burberry)	12	800	9,600
34	Men's T-Shirt (Brand-Adidas)	10	400	4,000
35	Men's T-Shirt (Brand-Armani)	12	500	6,000
36	Men's T-Shirt (Brand-GUCCI)	12	450	5,400
37	Men's T-Shirt (Brand-Burberry)	11	500	5,500
38	Men's T-Shirt (Brand-HUGO BOSS)	12	500	6,000
			Total	11,20,420
	GRAND TOTAL [A+B+C]		Rs. 17, 54,907.00	

2.10 After following the due procedure in respect of branded goods found within the consignment and on completion of investigations, a show cause notice dated 04.03.2020 was issued to the appellant asking them to show cause as to why:-

(i) *The Goods of different brands total valued at Rs. 4,21,850/-mentioned in the Tabulated List (C) of Para 7.1 of this notice above excluding the goods mentioned at Sl. No.2, 6, 20, 21 & 29 of the list, should not be absolutely confiscated under Section 111(d) of the Customs Act, 1962 as the same has been brought into India in violation of the Section 46 read with Section 11(2)(n) & (u) of the Customs Act, 1962 and why the same should not be disposed off under Rule 11 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007; as*

(ii) *The Goods of different brands as mentioned at SI No. 2,6,20,21 & 29 in the Tabulated List (C) of Para 7.1 of this notice above total valued at Rs.6,98,570/- should not be confiscated under Section 111(f), 111(i), 111(l), 111(m) of the Customs Act, 1962 ?;*

(iii) The un-declared goods valued at Rs.76,361/-mentioned supra in the Tabulated List (B) of para 7.1 above, should not be confiscated under Section 111(1), 111(i), 111(1), 111(m) of the Customs Act, 1962 of the Customs Act, 1962 as the same have been mis-declared in violation of Section 46 of the customs Act, 1962?;

(iv) The goods valued at Rs. 5,58,126/- mentioned supra in the Tabulated List (A) of Para 7.1 of this notice should not be confiscated under Section 118 of the Customs Act, 1962 as the same have been used to conceal the un-declared and prohibited goods as listed in the said List (B) & List (C) supra?;

(v) Penalty should not be imposed upon them under Section 112(a) & 112(b) of the Customs Act, 1962 for violation of Section 46 & Section 11(2)(n) & (u) of the Customs Act, 1962 read with the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 ?;

(vi) Penalty should not be imposed upon them under Section 114 AA of the Customs Act, 1962 ?"

2.11 The said show cause notice was adjudicated as per the Order-in-Original referred in para 1 above.

2.12 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been disposed of as per the impugned order.

2.13 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Anuj Agarwal learned Counsel for the appellant and Shri Abhishek Mukharjee learned Authorized Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- He is not challenging the order in respect of confiscation of the branded goods and he is also not claiming any title of the said goods. He also does not dispute the issue in respect of valuation of the goods as listed in para 2.4 above. As per the order of the release of the said goods on payment of redemption fine due duty would be paid.

- In respect of list A of the goods which has been assessed as declared value and they have paid the duty due.
- The only challenge in the present appeal vis-à-vis redemption fine of Rs.80,000/- imposed on the goods in list A and the penalty of Rs.4 lakhs imposed.
- Appellant was totally innocent in the matter as he was not aware as to how such goods came alongwith the goods ordered by him. It would have been by mistake on the part of the foreign supplier only.
- The only case made against him is vis-à-vis non supply of e-mail by which the order paced from the foreign supplier.
- He requested that a lenient view to be taken in the matter.

3.3 Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For upholding Order-in-Original, impugned order records the findings as follows:-

> *"On going through the grounds of appeal of the appellant I find that the appellant has alleged that the competent authority has not followed the relevant instruction No.01/2017-Customs, F.No.591/04/2016-CUS (AS) dated 08.02.2017. I find that the department did not pass appropriate order in addition to the Panchnama as mentioned in above instruction and the same has also been discussed by the original adjudicating authority in Para 4.12 of the impugned order. It is also discussed that the Panchnama/Recovery Memo was drawn in presence of the appellant wherein all ground of reasonable belief was clearly mentioned by the officers of Customs. Therefore, the appellant actively participated in seizure proceedings and was well aware of the reasons thereof. I am in the agreement with the original adjudicating authority that merely non-adherence of procedure prescribed under Instruction No.01/2017-Customs dated 08.02.2017 by the*

investigation officers does not absolve the appellant from the apparent fraud committed by them with intention to evade Customs duty.

Coming to the second plea of the appellant that the Customs can take action against the importer only when the IPR holder gives notice against who imported the licensed branded goods and also quoted para-19 of Circular No.41/2007 dated 29.10.2007. In this regard, I reproduce the Rule 7(b) of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as under-

7. Suspension of clearance of imported goods.-

(1) (b)The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may, on his own initiative, suspend the clearance of goods, in respect of which he has prima-facie evidence or reasonable grounds to believe that the imported goods are goods infringing intellectual property rights.

According to above rule, the Deputy Commissioner/Assistant Commissioner of Customs having prima-facie evidence or reasonable grounds to believe that the imported goods are goods infringing intellectual property rights may, on his own initiative suspend the clearance of goods. Department acted in terms of Rule 7(1)(b) in case of the appellant. As regards the reasonable grounds to believe that the imported goods are goods infringing intellectual property rights in this case, in para 1.8 of the impugned order, it has been mentioned that the appellant in their statement tendered under Section 108 of the Customs Act, 1962 admitted that they had neither placed any order to their suppliers for such types of branded goods nor had any NOC from the brand owner of said undeclared branded goods. There existed thus reasonable grounds for the Customs authority to believe that the imported goods were infringing intellectual property rights. Now I examine para-19 of Circular

No.41/2007 dated 29.10.2007 quoted by the appellant in their support. Para-19 of the circular stipulates as under-

> *"Sub-rule (9) of Rule 7 of the said Rules, provides for seizure of infringing goods, if there are reasons to believe that the goods are liable to confiscation in terms of section 111 of the Customs Act, 1962. In this context, it may please be bome in mind that Customs is enforcing laws in personam while protecting intellectual property rights. Thus it is important to make sure that the right holder participates in the Customs proceedings. In case the right holder abstains, the Customs have no obligation to continue with the detention and the goods shall be released forthwith, if otherwise in order."*

In para 4.13 of impugned order, it is clearly mentioned that on being informed by the Customs officer, the right holders of seized branded goods have joined the proceedings promptly and except two, all others of them (right holders of the goods mentioned at Sl.No.2,6,20,21 & 29 of the list C mentioned in impugned order), submitted their technical report and requested therein that the goods should not be released under any circumstances and appropriate action should be taken against the imported under the provision of intellectual property Rights (Imported Goods) Enforcement Rules, 2007. The goods mentioned at Sl.No.2,6,20,21 & 29 of the list C, pertaining to two brands only, in which right holders did not join the proceeding as prescribed under IPR Enforcement Rules, 2007. The goods were absolutely confiscated by the original Adjudicating authority under Section 111(f), (i), (1) & (m) of the Customs Act, 1962 for illegally imported into India in concealment with intention to evade payment of the duty of Customs. In view of the above I find no force in this ground of appeal of the appellant.

Coming to the fourth grounds of appeal of the appellant that the prohibition for imports is only imposed in terms of Notification No. 51/2010 Customs dated 30.06.2010 when the conditions and procedures as specified in the IPR Enforcement Rules, 2007 are followed. In this regard, I *find that the officer of Customs followed the procedures of IPR Enforcement Rules, 2007 viz. the right holders of undeclared branded goods were informed and also availed the technical report regarding above seized branded goods and the same was also discussed at length in Para 1.13 to 1.19 and in Para 4.10 to 4.14 of the impugned order.*

Appellant contested the valuation of department. In case of Sl No.2 & 3 of the list C as the value was calculated on the basis of bill recovered from the packets of the goods and pleaded that the transaction value is to be adopted and cannot be rejected under rule 12 of the Customs Valuation rule unless the department can produce the objective reason and strong evidence to show that the said declared value is not bonafide and correct. This plea of the appellant cannot be accepted as the goods mentioned at Sl No.2 & 3 of the List C were not declared in the Bill of entry of the appellant and also no transaction value was declared by them. The same was illegally imported into India in concealment with intention to evade Customs duty. I also find that the bill of the goods mentioned at Sl. No.2 & 3 of the list C, i.e. Branded Belt were recovered from the packets of the goods itself, therefore, valuation of the same is not required. The same is also discussed in Para 4.15 of the impugned order.

Now I take up the core issue of the appellant that they have imported goods without any ill intention but due to supplier's mistake different goods were dispatched. I find that appellant in their statement tendered under Section 108 of the Customs Act, 1962 stated that they placed order to the supplier abroad through e-mail but they could not produce the copy of that e-mail to substantiate the claim. I fail to understand the reason as to why the appellant could not produce the copy of the e-mail to the Customs Officers, as the copy of e-mail can be retrieved any time. Appellant also pleaded in their grounds of appeal *that they have neither paid any amount over and above transaction value declared in bill of entry, nor the department could produce any evidence showing extra consideration over and above the transaction value, the same is liable to be rejected as in para 1.9 of the impugned order, the appellant stated in their statement dated 11.09.2019 recorded under Section 108 of the Customs Act, 1962 that they had not yet made any payment to the supplier against the goods brought/imported into India under the said AWB No.065-33160713. On perusal of O-I-O, it is found that the appellant could not produce any record regarding payment in respect of goods imported by them. I am of the considered opinion that the appellant has no evidence vide which they could establish their bonafide.*

As regards the Appellant's plea that they are not liable for imposing any penalty under Section 112(a), (b) & 114AA of the Customs Act, 1962, 1 find from para 4.16 to para 4.22 of the impugned order that the appellant has violated the provision of Section 46 read with Section 11(2)(n) & (u) of the Customs Act 1962 and the Intellectual Property Rights (Imported goods) Enforcement Rules, 2007 and for bringing the prohibited and un-declared goods in India, the penalty imposed under Section 112(a) & (b) of the Customs Act, 1962 is just and proper. Penalty imposed under 114AA of the act has already been dropped in impugned order.

Finding no infirmity in the O-1-0, I reject the appeal filed by the appellant."

4.3 From the facts as above and in the orders of the lower authorities, it is evident that appellant have imported the goods as per his own admission against purchase order dated 22.08.2019 for which they filed bill of entry. However, on 100% examination of the goods the consignment was found to be grossly mis-declared in terms of the quantities, description and value. It was also revealed that consignment contained quite a large quantity of the goods which were bearing the brand name of the third party, which is contravention of the provisions of the Intellectual Property (Imported Goods) Enforcement Rules. After following due process these declared goods were put under seizer in terms of Panchnama dated 09.09.2019.

4.4 The submissions made by the appellant to the fact that they were totally innocent as they have not placed the order in respect of the branded goods to their foreign supplier did not find favorable argument before the authorities below. However, I am not required to go into much detail about this as appellant has relinquished title of the said goods in the submissions made before me. They have claimed only in respect of the goods duly imported as per their order for which they claimed that they are liable. It is not in dispute that the goods imported by the appellant was accompanied and used for concealment of large quantities of undeclared goods sought to be smuggled in to India with some declared goods by violating the provisions of Trade Markets and Intellectual Property Laws, for the same reason these goods are liable for confiscation as has been rightly held in the orders of the lower authorities in terms of Section 118 and 119 of the Customs Act. As these goods has been held liable for confiscation and allowed to be redeemed, the order to this extent cannot be faulted with. However, I find that redemption fine of Rs.85,000/- imposed on the appellant to be excessive when compared with the value of the goods said to be released against the same. Accordingly, I reduce the redemption fine to the 10% of the declared/assessed value of the goods i.e. Rs.55,812/-.

4.5 I also observe that the import in the course if international trade are not made in the manner that appellant wants to impress upon me. He cannot be innocent in respect of supply of the undeclared goods from the foreign supplier without any purchase order, invoice etc. How can the claim may be made by the appellant to be accepted when even after seizure and relinquishment of the total foreign supplier do not make any claim to the said goods in case of excess supply foreign supplier would definitely seek re-export if the submission of the appellant would have accepted, I do not find much merits in the submission of the appellant.

4.6 In case of Matrix Info Systems Pvt. Ltd. [Final Order No A/85122-85123/2019 dated 17.01.2019 in Customs Appeal No 88129 & 88400/2018], Mumbai Bench has observed as follows:

> *"5.10 Accordingly the charge of mis declaration of the consignment in terms of description, quantity and value is well founded. In case of Kumar Overseas [1997 (95) ELT 231 (T-Del)] tribunal has upheld the charge of misdeclaration and violation of ITC Policy-*
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> > *"2. Appellant is a trader at Ludhiana. Three containers described as containing Heavy Melting Scrap No. 1 of Japanese origin reached Bombay Port on 27-9-1995 for onward transmission to Jalandhar. On permission obtained by the appellant from Bombay Custom House goods were allowed to be transported under Bond to Jalandhar. On 25-10-1995 Department received information that the consignment consisted really of used diesel engines and auto parts camouflaged as melting scrap. Three consignments were located at Jalandhar and detained on 6-11-1995. IGM No. 2308, dated 27-9-1995 described the goods as 58.490 MT of STC Heavy Melting Scrap No. 1. Import documents presented at the Bombay Custom House while seeking permission for onward transmission to Jalandhar also described the goods as `scrap'. On 21-11-1995 Steamer Agent moved an application before the Assistant Commissioner Import Department, Bombay seeking amendment of IGM description as old diesel engines, auto spare parts and scraps. IGM was duly amended on the next day. On 23- 11-1995 appellant submitted Bill of Entry*

with revised invoice, revised packing list, revised bill of lading, etc. describing the goods as old and used diesel engines, spare parts and scrap and purporting to seek clearance under OGL. The Appraiser prepared a list of valuation, according to which correct value of diesel engines and spare parts would be much more than the value declared by the appellant. On 1-12-1995 goods were seized. Show cause notice dated 28-5-1996 was issued alleging violation of licensing requirement, alleging fraud and manipulation in the import of diesel engines, and spare parts in the garb of scrap, mis-declaration of description and mis-declaration of value and proposing confiscation of the goods and imposition of penalty on all the above grounds.

3. Appellant resisted the notice contending that an order had been placed before the supplier over telephone for supply of Heavy Melting Scrap No. 1 in August, 1995 but a shipment intended for some other party and containing used diesel engines, auto scrap etc. were wrongly shipped to the appellant. It was pointed out that even on 30-10-1995 the supplier's bank, that is, Bank of Baroda, had sent a telex message to Punjab National Bank, the importers bank, seeking return of the import documents and on 31-10-1995 appellant received a fax letter from the supplier intimating that the consignment was wrongly shipped though meant for some other party and requesting the appellant to accept the consignment "as on whereas basis in view of the old business relation". Documents were collected and sent back to the supplier who issued fresh set of documents describing the goods as shown in the amended IGM.

4,5,6 …….

> *7. For the reasons indicated above, we confirm the order to the extent it relates to confiscation of the goods in regard to ITC angle and mis-description of goods and imposition of penalty but set aside confiscation on account of mis-declaration of value, quantification of redemption fine and quantification of penalty. The case is remanded to the jurisdictional adjudicating authority for deciding afresh the correct assessable value and quantifying redemption fine and penalty. If the Department desires to rely on further documents, copies of the same may be furnished to the appellant who will also be at liberty to produce documents in regard to controversy requiring decision."*

5.11 In case of Monica Enterprises [2002 (149)ELT 1264 (T-Del)] it has been held as follows:

> *"27.In paragraph 75 of the impugned order, the Collector has discussed the point regarding shipment of excess goods than those declared in the bills of entry. The appellants' plea before Collector was that the fact of excess shipment came to notice of the foreign supplier based on the auditor's scrutiny. Collector has not accepted this plea. He has observed that the Directorate of Revenue Intelligence started enquiry on 18-3-1986 and Shri Jatinder Uppal came to know about this enquiry on 18-3-1986, by which date the assessment was done by Custom and the duty was paid on 17-3-1986. The duplicate bills of entry were collected by Shri Uppal and the goods were not yet examined. Collector has also observed that the appellants could not give any positive evidence to show what were the quantities ordered for ICD Delhi, what quantities were ordered for Madras and how much had been received or not received at Delhi visa-vis those received at Madras.*

In the absence of any such evidence, the Collector has held that the telex dated 21-3-1986 was a solicited one. Further, the Director, Overseas Communication Service, Delhi reported non receipt of incoming call to Delhi Telex No. 3165628 from Singapore. In these circumstances, Collector was justified in rejecting the assertion of the appellants. Considering the totality of the facts and circumstances of this case, we observe that it was not at all difficult for Shri Uppal to obtain a solicited telex to meet the enquiry already started by D.R.I. and the Collector was justified to hold that the appellants were guilty of deliberate misdeclaration and to confiscate the goods under Section 111(m) of the Customs Act. The excess goods which were imported in the consignments, but not declared in the bills of entry are also liable to confiscation under Section 111(l) of the Customs Act. The value of the excess goods was not declared in the bills of entry, which also rendered the goods liable for confiscation under Section 111(m) of the Customs Act."

5.12 Hon'ble Delhi High Court has in case of Muscles Fusion FZE [2017 (354) ELT 525 (DEL)] held as follows:

"23.The submission that the same was a bona fide mistake clearly appears to be an afterthought. This stand of the petitioner is not borne out from any contemporaneous documents on record. There is no invoice, airway bill, purchase order or any other document stating that goods were meant to be delivered to a Singapore based customer. The petitioner has failed to make out a case of bona fide mistake and the findings of the ACC (Imports) to the said effect are unsustainable in law. The non-imposition of fine is also contrary to a bare reading of Section 125 of the CA which reads :

Option to "125. pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof if prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) of the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods."

24. Mere non-imposition of penalty/fine, which is the mandate under Section 125 of the CA in case of confiscated goods, cannot automatically result in letting the petitioner go scot-free. The ACC (Imports) had no discretion not to impose fine as the provision clearly provides that "officers.......... shall .... give to the owner of the goods.......... an option to pay in lieu of confiscation such fine as the said officer thinks fit...........". Thus, the imposition of fine under Section 125 was a logical and mandatory consequence once the goods were confiscated. Once the fine is imposed, the owner of goods is liable to any duty and charges payable in respect of the said goods under Section 125(2) of the CA."

5.13 In view of the discussions as above, we do not find any merit in the submission of the appellants that the goods were wrongly shipped by the shipper. In fact as pointed out and discussed above, these goods were sought to be imported into India contrary to the EXIM Policy restriction and also by grossly undervaluing the same. There is no merit in the submission of the appellants with regards to bonafides, which in any case is not established in this case. Hence the decisions of Tribunal relied upon by the appellants are clearly distinguishable."

4.7 Further, in the Customs Act, it is necessary that mensrea to be always present while determining the Courts and this Tribunal has been constantly taking views penalties under this act are provided under Section 112 (a) and 112 (b) of the Act. For imposition of penalties under Section 112 (b) if mensrea is required penalty under Section 112 (a) could have been imposed, even otherwise. In the case of S. Rajagopal [2001 (129) E.L.T. 202 (Tri. – Chennai)] Chennai Bench held as follows:

"2. We have heard ld. Advocate Shri M.A. Jabbar for the appellants and Shri S. Sudarsan, ld. DR for the department and after considering their submissions, we find -

(A) Section 112 of the Customs Act reads as follows:-

"SECTION 112 : Penalty for improper importation of goods, etc. - Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.".

Section 74 of the Customs Act reads as follows :-

> *"74. Liability to penalty - Any person who, in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under this Act, or abets the doing or omission of such an act, or is in charge of the conveyance or animal which is liable to confiscation under this Act, shall be liable to a penalty not exceeding five times the value of the gold or one thousand rupees whichever is more, whether or not such gold has been confiscated or is available for confiscation."*

(B) These two sections have been extracted and a plain reading thereof would indicate that a penalty under these sections, especially under Section 74 of the Gold (Control) Act, there should be on existence of positive factors rheus, by the person on whom the penalty has been imposed. Mere evidence of agreeing to receive and or dispose of certain quantities of gold would not bring such a person under the ambit of Gold (Control) Act Section 74. As regards the Section 112 of the Customs Act, we find that 112 (a) & (b) bring in a positive different rules for invoking the penalties. In the present case, there has been no finding whether the penalty has been imposed under Section 112 (a) or 112 (b). We find that for Section 112 (a) no reasons to believe regarding liability for confiscation for those acts mentioned therein are required, while for a person on whom the penalty is imposed under Section 112 (b) reasons to believe, that the gold in question was liable for confiscation under Section 111 would be a prime requisite, before it could be determined as to under which particular activity as mentioned under Section 112(b) the person was required to be visited with penalty. Keeping these views of the two Sections, we proceed to determine

> *the levy of penalty on the present applicant in both the appeals."*

4.8 Thus in the present case, I do not find any justification in the submissions made by the Counsel with regards to the imposition of penalties. In the case of Vaibhav Exports [2009 (244) E.L.T. 527 (Bom.)], Hon'ble Bombay High Court held as follows:

> *"13. The learned Senior Counsel for the Revenue contended that for imposition of penalty under the provisions of the Customs Act, it is not necessary to establish mens-rea because these are the quasi-civil proceedings. In support of this, he relied upon the Chairman, SEBI v. Shriram Mutual Fund and Another - (2006) 5 Supreme Court Cases 361 wherein Their Lordships observed as follows in paragraph 35 :*
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> > *"35. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation become wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further hold that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15-D(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."*

In Commissioner of Customs (Preventive) v. Aafloat Textiles (I) P. Ltd. - 2009 (235) E.L.T. 587 (S.C), the Supreme Court held that principles of "Caveat Emptor", that is the buyer be aware, is applicable even when a person makes any imports under the forged licence. Their Lordships observed as follows in Paragraph 27 as follows :

> *"27. Whether the buyer had made any enquiry as to the genuineness of the licence is within his special knowledge. He has to establish that he made enquiry and took requisite precautions to find out about the genuineness of the SIL which he was purchasing. If he has not done that consequences have to follow. These aspects do not appear to have been considered by the CESTAT in coming to the abrupt conclusion that even if one or all the respondents had knowledge that the SIL was forged or fake that was not sufficient to hold that there was no omission or commission on his part so as to render silver or gold liable for confiscation."*

In Bharjatiya Steel Industries v. Commissioner, Sales Tax, Uttar Pradesh - (2008) 11 Supreme Court Cases 617, the Supreme Court held that whether mens rea is essential ingredient or not will depend upon the nature of rights of the parties and the purpose for which penalty is sought to be imposed. In the present case, it is clear that Hiralal Jain and Kamlesh Khicha are owners of Vaibhav Exports and Pushpak Impex and Hiralal Jain real owner of M/s. Vijaybhav Exports and M/s. Deepali Exports. Gyanchand Jain and Rajesh Jain, apparent proprietors of Vijaybhav Exports and Deepali Exports were only employees and they were acting directly under control and as per the directions and instructions from Hiralal Jain. Hiralal Jain used to secure forged replenishment licences and used the same for huge imports in the name of these four entities. He was the real master mind in procuring and using the forged *licences. Taking into consideration facts and circumstances, it is impossible to hold that Hiralal Jain did not have knowledge that the licences were forged. Even though mens rea may not be necessary for the purpose of imposing penalty for the contravention of the statutory provisions of the Customs Act, we find that Hiralal Jain had in fact such intention and had purposefully secured forged documents with the help of one Gautam Bagri. It is immaterial and irrelevant as to who had actually forged documents and as to how they were forged. Fact remains that Hiralal Jain was fully aware that the licences were forged and this fact was known to Gyanchand Jain, Rajesh Jain as well as Kamlesh Khicha, who also used those forged licences."*

4. 8 However, penalty of Rs.4 lakhs imposed is too excessive and the same is reduced to Rs.2 lakhs.

4. 9 With the above modifications, impugned order is upheld.

5.1 Appeal is partially allowed.

(Order pronounced in open court on-10 September, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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