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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10894 of 2026
(Arising out of Order-in-Appeal No. MUN-CUSTM-000-APP-271-26-27 dated 24.09.2026 passed by Commissioner (Appeals)- Ahmedabad)

M/s Cargo Concept Bombay Pvt. Ltd. **...Appellant**
Office No.11-12, Ground Floor, Sadguru Empire,
Near Rasapir Circle, Adani Port, Mundra-370421

VERSUS

Commissioner of Customs (Appeals)-Mundra **...Respondent**
Office of the Principle Commissoinerate of Customs,
Custom House Mundra, Special Economic Zone, Mundra
Kutch Gujarat-370421

APPEARANCE:
Shri Manish Jain, Advocate appeared for the appellant
Smt. Sunita Menon, Authorised Representative appeared for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10815 /2026

DATE OF HEARING: 30.10.2026
DATE OF DECISION: 04.11.2026

SOMESH ARORA:

The period of dispute in this case is from July 2022 to August 2022 for which show cause notice has been issued on 18.08.2023. At this stage penalty of Rs. 10,00,000/- each under Section 112(a)(iii) and Section 114AA on the Appellant for active participation and abetment in the handling and clearance of offending import documents has been imposed. The other factual facts of the case are as follows:-

1.1 Based on the Intelligence gathered by the DRI that indicated that M/s. Extreme Electronics Pvt. Ltd. (New Delhi) was importing old/used and rejected PCBs via 7 containers covered under 41 Warehouse Bills of Entry through the SEZ warehouse unit of M/s. Sea Shore Logistics (Mundra, Gujarat). Investigation was conducted by DRI that revealed that the actual goods were old, used, marked

"rejected" with "X" symbols, manufactured years back (2009-2013), and had a physical shortage of 19,726 pieces compared to declarations. The goods imported did not have the requisite permissions/authorisations applicable to the goods.

1.2 The Appellant, M/s. Cargo Concept Bombay Pvt. Ltd., through its employee/representative (Shri Pravin Kumar) and Director (Shri Kanhaiya Jagdish Kasera), collected original shipping documents, approached the shipping line (M/s. Aegon Shipping), submitted KYC/authorization papers, and obtained the Delivery Orders (DO) for the 41 Bills of Entry.

1.3 The Adjudicating Authority (Additional Commissioner, Mundra) vide OIO No. MCH/ADC/AKM/355/2024-25 dated 28.03.2025 confiscated the goods under Section 111(d) & 111(m), re-determined the value to Rs. 18.67 Crores, allowed re-export on payment of redemption fine, and imposed penalties of Rs. 10,00,000/-under Section 112(a)(iii) and Rs. 10,00,000/- under Section 114AA on the Appellant.

2. Learned advocate indicated that the appellant is a Custom Broker engaged in the business of custom clearance of import cargo on behalf of its clients. In the present case, the Appellant had delivered the documents to the Shipping Line for filing 41 Warehouse Bills of Entry at the Mundra Port on behalf of M/s. Extreme Electronics Pvt. Ltd. (hereinafter referred to as "Principal Appellant/Importer") for importation of Printed Circuit Boards.

2.1 One of Directors of the Appellant Company, Shri Kanhaiya Kasera was approached by Shri Deepak Mittal, Proprietor of M/s. Sea Shore Logistics on 08.08.2022, who requested Shri Kanhaiya to file the Bills of Entry on behalf of the Importer, M/s. Extreme Electronics

Pvt. Ltd and complete the formalities for delivery of containers with the Shipping Line, M/s. Aegon Shipping India Pvt. Ltd.

2.2 Thereafter, Shri Shailesh, employee at M/s. Sea Shore Logistics contacted Shri Kanhaiya and stated that they have only few persons in their staff and none of them are from Gandhidham where the Shipping Line is situated. Thus, he requested the Shri Kanhaiya to deliver the original Bill of Lading to the Shipping Line for delivery of Containers.

2.3 Since Shri Kanhaiya had known Shri Deepal Mittal since the year 2020, he agreed to handle the said work and accordingly, authorized Shri Pravin Kumar for handling the delivery of the documents to the Shipping Line.

2.4 M/s. Sea Shore Logistics shared the documents with the Appellant on behalf of the importer which included the Bill of Lading, KYC documents of the importer, KYC form, GST Certificate, IEC Certificate and Authorization Letter and the same were further shared with Shri Pravin Kumar. Accordingly, Shri Pravin Kumar handed over the import documents to the Shipping Line.

2.5 After handing over the documents to the Shipping Line, the Appellant took the delivery order from the Shipping Line and handed over the same to M/s. Shri Sea Shore Logistics. The Bills of Entry were thereafter filed by M/s. Sea Shore Logistics on behalf of the Importer.

2.6 It is also stated that the appellant have been subjected to allegation in show cause notice dated 18.08.2023 in their capacity as a CHA on the allegation that they dealt with imported goods in a casual manner and did not even verify the genuineness of the importer and allowed its employees to proceed with the filing of the

Bills of Entry. It was further alleged that although the Appellant did not receive any amount for dealing the imported goods. However, the facts indicate that the Appellant dealt with the imported goods with a malafide intention and therefore, the Appellant has rendered the goods liable for confiscation and this is for penalty under Section 111 of the Customs Act, 1962 and also liable for penalty under Section 112(a) and 112 (b) of the Customs Act, 1962. The appellant have rebutted the above allegation before this court in following manner:-

A. THE APPELLANT DID NOT ACT IN THE CAPACITY OF A CUSTOMS BROKER OR A CUSTOMS HOUSE AGENT,

A.I. The Appellant at the very outset submits that the Appellant did not act in the capacity of a Customs Broker or Customs House Agent. As stated in the facts supra, the Appellant only handed over the documents to the Shipping Line on the request made by M/s. Sea Shore Logistics and thereafter, took the Delivery Order from the Shipping Line and provided it to M/s. Sea Shore Logistics.

A.2. The Bills of Entry were thereafter filed by M/s. Sea Shore Logistics on behalf of the Importer. On a perusal of the Bills of Entry, it becomes clear that none of the Bills of Entry were filed by the Appellant as the name of the Appellant does not appear in any of the Bills of Entry. Therefore, it is erroneous to allege that the Appellant had acted in the capacity of a Customs Broker.

A.3. Moreover, it is submitted that the concept of Customs Broker is not available in cases of Special Economic Zones

("SEZ"). Thus, the entire penalty becomes liable to be dropped in view of the above set of facts itself.

B. IMPOSITION OF PENALTY UNDER SECTION 112(a) OF THE CUSTOMS ACT, 1962 IS NOT SUSTAINABLE.

B.1. The Ld. Commissioner (Appeals) vide the Impugned Order dated 24.09.2026 has confirmed penalty under Section 112(a)(iii) of the Customs Act on the Appellant for clearance of prohibited goods by way of misdeclaration with respect to quantity, value, description etc. which has rendered the imported goods liable for confiscation under Section 111 of the Customs Act, 1962.

B.2. Section 112(a) of the Customs Act during the relevant period is extracted herein for ease of reference:

"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 III, or abets the doing or omission of such an act, or shall be liable. -

(...)

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference

between the declared value and the value thereof or five thousand rupees, whichever is the greater;"

B.3. Under Section 112(a), the penalty is imposable on any person who in relation to any goods, does or omits to do any act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act.

B.4. This provision can, therefore, be invoked in two cases:

1) Direct involvement- Where any person does an act or omission which would render the goods liable to confiscation; or

ii) Abetment- Where any person 'abets' such act or omission which would render the goods liable for confiscation.

The Appellant has not acted/ omitted to act in a way which would render the impugned goods liable to confiscation.

B.5. It is submitted that in the 1st case, the person who, on his accord does an act or omission which would render the goods liable for confiscation would be liable to penalty under Section 112(a) of the Customs Act, 1962.

B.6. It is submitted that the Appellant never did anything or omitted to do anything in the present case. The goods were imported by M/s. Extreme Electronics Pvt. Ltd. and the Appellant had only delivered the goods to the Shipping Line on the request of Shri Deepak Mittal of M/s. Sea Shore Logistics because their staff was not available in Gandhidham where the Shipping Line was situated. No other fact has been established or been alleged by the Department which reflects that the

Appellant was directly involved in any act or omission which has rendered the goods liable for confiscation.

Penalty cannot be imposed on the ground that the Appellant abetted in the wrongful act.

B.7. In the 2nd case, the person who "abets" any commission or omission of act would also be liable to penalty under Section 112(a) of the Customs Act, 1962. In such cases, however, the knowledge of the person abetting the act or omission is necessary. It is submitted that abetment, necessarily requires, at the minimum, knowledge of the offending Act.

B.8. As the words 'abet' or 'abetment' are not defined in the Customs Act, 1962, it is pertinent to refer to the General Clauses Act, 1897, Section 3(1) of the General Clauses Act, 1897 defines "Abet" as under:

"Abet" with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860)"

B.9. Relevant portion of Section 107 of the Indian Penal Code defines 'abetment' as under:

"107. Abetment of a thing-

"A person abets the doing of a thing, who-

Instigates any person to do that thing; or

Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal

omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1-A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

B.10. The Hon'ble CEGAT, Mumbai in CC Vs. M. Vasi-2002 (11) TMI 135 has clearly held that:

"... Abetment presupposes knowledge of the proposed offence and also presupposes benefit to be derived by the abetters therefrom"

B.11. Furthermore, in the case of Tatu Oil Mills Company Ltd. and Another vs. Union of India and Another, 1986 (26) E.LT. 931 (Bom), the Hon'ble High Court applied the definition of 'abetment' as appearing in the Indian Penal Code, 1860 while deciding whether the petitioners could be said to have abetted the unauthorized import of tallow wherein the petitioners merely acted as bona fide purchasers. The relevant extract of the judgement is as under:

"4.... The petitioners have established beyond doubt that the charge of abetment referred to in the show cause notice by respondent no. 2 is wholly unsustainable and, therefore, respondent no. 2 had no jurisdiction to issue show cause

notices. The expression "abetment" has been defined under the General Clauses Act as one known in the Indian Penal Code and under the Indian Penal Code, the person is said to abet when such person instigates or participates in commission of the offence. In my judgment, it is a far cry to suggest that the petitioners have abetted contravention of the licence by purchasing, the tallow after it was cleared by the customs department. In my judgment, show cause notices were issued without any authority and deserve to be quashed."

(Emphasis Supplied)

B.12. Thus, the definition of "abetment' as defined under Section 107 of the IPC is relevant even for the purpose of the Customs Act.

B.13. Moreover, the Courts have in various cases enlisted the basic ingredients which must be present for an act to constitute 'abetment". The main ingredients are as under:

i) There must be a mala fide intention on the part of the accused to provoke, incite or encourage the doing of an offence.

ii) There must be a positive act on part of the accused.

iii) A person should facilitate the commission of that act.

iv) Mere Negligence is not sufficient to constitute abetment.

v) Mere lack of care and diligence is not sufficient to constitute abetment.

vi) The accused must be proved to have derived a pecuniary benefit from the act.

B.14. The judicial precedents have also held the presence of mens rea as an essential prerequisite for establishing abetment and for imposition of penalty under Section 112(a). In this regard Hon'ble Tribunal in the case of Harbhajan Kaur vs. Collector of Customs, 1991 (56) ELT 273 Tri Del, held that:

> "A mere giving of an aid will not make the act an abetment of an offence, if the person who gives the aid did not know that an offence was being committed or contemplated for it is the act of intentional aiding and therefore active complicity which is the gist of the offence of abetment made punishable by law."

B.15. Reliance is also placed on the case of V. Lakshmipathy vs. Commissioner of Customs, 2003 (153) ELT 640 Tri Bang, wherein it was held:

> "2. (c)The imposition of a penalty under Section 112(a) of the Customs Act presupposes an existence of an element of mens rea. There is no evidence to indicate any such guilty mind on the part of the Noticee herein. There is no evidence that the Noticee herein had dealt with any manner with the goods found to be liable to confiscation. The provisions of Section 112 would apply only to persons who engage themselves in the physical act of importation of the goods..."
>
> (Emphasis Supplied)

B.16. Reliance is also placed on the judgment of Owens Corning Enterprises (1) P. Ltd. vs. C.C. (Export), Nhava Sheva reported in 2011 (270) E.L.T. 547 (Tri- Mumbai) for the aforesaid proposition.

B.17. In Sij Electronics Comp Tech v. CC, 2001 (129) ELT 528 (T), it was held that mens rea or mala fide intention is a necessary requirement for imposition of penalty under Section 112.

B.18. Reliance is placed on the decision of the Hon'ble Delhi High Court in the case of Rajeev Khatri v. CC (Export), 2023 (7) TMI 218-DELHI HIGH COURT wherein it was held that the use of the expression 'abet' in Section 112(a) of the Customs Act, makes it implicit that the person charged, who is alleged to have abetted the acts of omission or commission, has knowledge and is aware of the said acts. A plain meaning of the word 'abet' means instigation, aid, encouragement of an offence, it necessarily involves the knowledge that the act being abetted is wrong.

B.19. The Appellant once again reiterates and emphasizes on the fact that it was not involved in the alleged misdeclaration or overvaluation of the imported. The Appellant only acted upon the request of Shri Deepak Mittal of M/s. Sea Shore Logistics because their staff was not available in Gandhidham where the Shipping Line was situated.

B.20. The Ld. Commissioner (Appeals) on the one hand has alleged that the Appellant has dealt with the imported goods in a casual manner because it did not verify the genuineness of the importer and on the hand, it has been alleged that the Appellant had malfide intention and was aware of the goods being importer.

B.21. It is submitted that the two allegations are completely contradictory in nature. The Appellant didn't know the importer and no fact has been brought on record to show that the Appellant knew the Importer or had communicated with the Importer. The only role of the Appellant in the entire case was delivering the goods to the Shipping Line and no further, allegation has been made against the Appellant either in the SCN or in the Impugned Order. Therefore, alleging malice on the part of the Appellant is completely unsubstantiated and baseless.

B.22. In view of the above submissions, the Appellant submits that there is no mens rea on the part of the Appellant, and no involvement whatsoever in the entire scheme, hence, the penalty is not imposable under Section 112(a) of the Customs Act. The conduct of the Appellant was totally bona fide and in the absence of any mala fide, no penalty is imposable.

B.23. In the case of Hindustan Steel Ltd. v. State of Orissa, 1978 (2) ELT (J159) (SC), the Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions or

where the breach flows from the bona fide belief. The relevant extracts of the said decision are extracted herein for ease of reference:

> "7.....An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

B.24. In the case of Trade Wings Vs. CC, Mumbai 2009 (243) ELT 439 (Tri.-Mumbai), Hon'ble Tribunal held that, mere lack of care and diligence by the Appellants is not sufficient to pin them with the charge of abetment.

B.25. Further, the appellate authority has relied on the written submissions filed by Shri Deepak Mittal wherein he denied having contacted the Appellant and the statement made by the Appellant. It is submitted that Shri Deepak Mittal could have cross-examined the Appellant to verify the genuineness of the statement made by it. However, no such procedure was adopted by Shri Deepak Mittal. Shri Deepak Mittal has only made plain allegations against the Appellant without any substance or evidence on record.

B.26. Without prejudice to the above submissions, even if it assumed that the Appellant was directly authorised by the importer to deliver

the import documents and get the goods cleared, even then it cannot be alleged that the Appellant was aware of the goods being imported by the importer.

B.27. In this regard, the Appellant would like to rely on the decision of the Hon'ble Bombay High Court in the case of Jayesh Shah v. UOI, 2022 (10) TMI 258-BOMBAY HIGH COURT wherein it was held as under:

> "7....In our view, if an FCL container has been loaded on board a ship, prima-facie, no-one except exporter or person who stuffed the containers will know what was inside the container
>
> 8. The Custom House Agent, which the Petitioner was, only files the Bills of Entry on behalf of the importer relying on the documents provided to him by the importer, and if there is mis-match between what is mentioned in the documents given to the Customs House Agent to file Bills of Entry and what is found in the FCL container, prima-facie, the Custom House Agent cannot be made liable; Added to that in the case at hand the 7x40 ft. containers were FCL containers.
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> 9. To impose total penalty of Rs.5.77 Crores on such Custom House Agent and without any satisfactory findings that he knew what was inside the 7x40 ft. containers or he knowingly or intentionally made any declaration would certainly cause undue hardship and more so to a person who has to file an appeal and deposit Rs.43,27,500/-being 7.5% of Rs.27 Lakhs plus Rs.5.5 Crores as pre-condition to filing an appeal.

B.28. Thus, the Appellant only acted on the basis of the information and documents provided to it. Thus, it is submitted that the imposition of the penalty under Section 112(a) of the Customs Act under the impugned order is liable to be set aside.

C. NO PENALTY IS IMPOSABLE ON THE APPELLANT UNDER SECTION 114AA OF THE CUSTOMS ACT, 1962.

C.1. The relevant portion of Section 114AA is extracted below for ease of reference-

> SECTION 114AA. Penalty for use of false and incorrect material. If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes

of this Act, shall be liable to a penalty not exceeding five times the value of goods.

Penalty under Section 114AA not imposable in case of import of goods.

C.2. The Appellant submits that penalty under section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. In support of this argument reliance is placed on the Twenty Seventh Report of the Standing Committee of Finance wherein insertion of section 114AA was discussed at paragraph 62. For the ease of perusal, the entire discussion is reproduced below: -

"Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows:

After section 1144 of the Customs Act, the following section shall be inserted, namely:-

> "114AA. Penalty for use of false and incorrect material. if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

63. The information furnished by the Ministry states as follows on the proposed provision:

> "Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a false statement etc. Questioned on these concerns, the Ministry in their reply stated as under:

"The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

65. The Ministry also informed as under:

"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."

(Emphasis Supplied)

C.3. The aforesaid extract from the report of the standing committee explains the purpose for which Section 114AA has been inserted in the Customs Act. The purpose is to punish those people who avail export benefits without exporting anything.

C.4. According to the legislature, Section 114 of the Customs Act provided penalties for improper exportation of goods and did not cover situations where goods were not exported at all. Such serious

manipulators could escape penal action even when no goods were actually exported. Therefore, there was a need for a specific provision to provide for such situations. In relation to the same, section 114AA was inserted to penalize persons in circumstances where export benefits are availed without exporting any goods.

C.5. Therefore, it is submitted that penalty under section 114AA is imposable only in those circumstances where export benefits are availed without exporting any goods. Since the present case relates to import of goods, there cannot be any question of the Appellant having claimed export benefits without actual export of goods. Since the impugned Order is only concerned with filing of Bills of Entry and not in relation to exportation (or claims of export benefits), penalty under section 114AA is not applicable to the present case.

C.6. Reliance in this regard is placed on the Hon'ble Tribunal's decision in CC v. Sri Krishna Sounds and Lightings (2019 (370) E.L.T. 594 (Tri. Chennai)]. Relevant portion of the decision is extracted below:

> "7. On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction, I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed.

C.7. The Appellant also submits that it has not been established in the impugned order as to how the Appellant has intentionally made, signed or used or has caused to be made, signed or used any declaration which is false or incorrect in any particular.

C.8. In the absence of such specific charges in impugned order that directly implicates the Appellant, the imposition of penalty under section 114AA is unsustainable. The Appellant in this regard places

reliance on the Tribunal's decision in Orion Enterprises v. CC [2019 (21) G.S.T.L. 397 (Tri. - Chennai)].

C.9. The Hon'ble Tribunal in Interglobe Aviation Ltd. v. Principal Commissioner of Customs, [2022 (379) E.L.T. 235 (Tri.-Bang)/ has also affirmed the above legal position. The relevant portion of the decision is extracted below:

> "20.....
>
> The appellants also contended that the penalty under the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. The present case does not relate to export at all and even for imports, all the documents presented for imports were genuine and not forged and thus the penalty is not imposable under Section 114AA of the Customs Act, 1962. We find that there is merit in the argument of the appellants. As the case is not of export, we find that no penalty under Section 114AA of the Customs Act, 1962 is imposable."
>
> (Emphasis Supplied)

C.10. The above legal position is affirmed in the case of M/s. V.R. Tools v. Commissioner of Customs, Chennai-2021-VIL-728-CESTAT-CHE-CU, wherein while allowing the appeal the Hon'ble Tribunal held that penalty under Section 114AA of the Customs Act, 1962 is attracted only when there is deliberate falsification of the documents in order to get undue benefit. The Section was proposed to be introduced consequent to detection of several cases of fraudulent exports where exports are shown only on paper and no goods crossed Indian Border.

C.11. From the above case laws and submissions, it is clear that there cannot be any proposal for imposition of penalty in the absence of any falsification on the part of the Appellant.

C.12. In view of the aforesaid submissions, it is submitted that the imposition of penalty under Section 114AA on the Appellant is liable to be dropped.

Penalty not imposable in absence of any pecuniary benefit to the Appellant.

C.13. It is further submitted that there is no evidence of any pecuniary benefit flowing to the Appellant and the same has not been disputed in the order.

C.14. In this regard, reliance is placed on the decision of the Hon'ble Appellate Tribunal, in the case of Commissioner of Customs, Mumbai vs. M. Vasi, 2003 (151) ELT (312) (Tri. -Mumbai), wherein it was held that for imposing penalty for abetment, knowledge of the proposed offence and also the benefit to be derived from the abetment has to be demonstrated.

The relevant extract is as under:

> "Abetment presupposes the knowledge of the proposed offence and also presupposes the benefit to be derived from the abetment there from... In the absence of conscious knowledge, penalty on charge of aiding and abetting would not sustain.
>
> (Emphasis Supplied)

C.15. No benefit has derived to the Appellant in the present case and the same has not been alleged by the Department. Thus, in view of the same, no penalty is imposable on the Appellant under Section 114AA of the Customs Act, 1962.

D. REBUTTALS AGAINST SPECIFIC ALLEGATIONS

D.1. The Ld. Commissioner (Appeals), at Para 13 of the Impugned Order, has alleged that the Appellant is liable for penalty because it took part in the documentary and delivery process for the import of the subject goods. Further, the fact that the Bills of Entry were not

filed in the Appellant's name does not absolve the Appellant from liability.

D.2. It is submitted that the said finding is erroneous and is not supported by any evidence establishing any conscious or intentional involvement of the Appellant in the alleged irregularities.

D.3. The Appellant did not file any Bill of Entry, undertake customs clearance, or perform any functions of a Customs Broker. The said position is also not disputed by the Department.

D.4. The Appellant merely handed over the documents to the Shipping Line at the request of M/s. Sea Shore Logistics, as the staff of M/s. Sea Shore Logistics was not available at Gandhidham. Thereafter, the Appellant collected the Delivery Order from the Shipping Line and handed it over to M/s. Sea Shore Logistics.

D.5. It was M/s. Sea Shore Logistics who filed the Bills of Entry on behalf of the Importer and undertook the entire customs clearance process. Merely handing over and collecting documents at the request of another person cannot, by itself, establish participation in an offence or an act rendering the Appellant liable to penalty.

D.6. It is further submitted that the Appellant was not aware of the contents, particulars or alleged discrepancies in the documents handed over to the Shipping Line. The documents were received and delivered by the Appellant only as a matter of assistance to M/s. Sea Shore Logistics. There is no evidence on record to establish that the Appellant had knowledge of any alleged misdeclaration, irregularity or contravention, or that the Appellant consciously intended to facilitate the same.

D.7. Therefore, the finding that the Appellant's mere participation in the documentary and delivery process is sufficient to attract penalty is unsustainable. In the absence of any evidence of knowledge or conscious involvement on the part of the Appellant, the essential ingredients for imposition of penalty under Section 112 of the Customs Act, 1962 are not satisfied. Accordingly, the penalty imposed against the Appellant is liable to be set aside.

D.8. At Para 15 of the Impugned order, the Ld. Commissioner (Appeals) has alleged that Appellant formed a part of the chain through which the imported consignments were handled and cleared.

D.9. Further at Para 16 of the Impugned Order, it is alleged that the Appellant was entrusted with documentation pertaining to substantial number of consignments, and performed functions pertaining to delivery thereof.

D.10. It is respectfully submitted that the aforesaid allegations are misconceived and do not establish any culpable role on the part of the Appellant. The mere fact that certain documents were handed over to or received by the Appellant does not establish that the Appellant was involved in the import or customs clearance of the consignments.

D.11. The Appellant had no knowledge of the contents or particulars of the documents in question, including the quantity, description, value, nature or other details of the imported goods. The Appellant neither prepared nor verified the said documents and had no reason to suspect that the documents contained any incorrect or disputed particulars.

D.12. The Appellant was also not involved in the preparation, filing or verification of the Bills of Entry or any other import documents. The

Appellant had no role in the assessment, examination or clearance of the goods and did not participate in the import transactions in any manner.

D.13. Therefore, merely handling documents or facilitating their delivery at the request of M/s. Sea Shore Logistics cannot, in the absence of knowledge or conscious involvement, make the Appellant a part of the alleged chain of improper import or clearance. There is no evidence establishing that the Appellant knowingly participated in, facilitated or abetted any act rendering the goods liable to confiscation.

D.14. The Ld. Commissioner (Appeals), at Para 18 of the Impugned Order, has alleged that the Appellant had knowledge of and participated in the commercial chain relating to the imported consignments.

D.15. In this regard, it is respectfully submitted that the said allegation is wholly misconceived and unsupported by any evidence on record. The Department has failed to produce any material whatsoever to establish that the Appellant had knowledge of the nature, description, value or other particulars of the imported goods, or that the Appellant participated in any commercial transaction relating thereto.

D.16. In the absence of any evidence showing conscious involvement or knowledge on the part of the Appellant, the allegation made in Para 18 is unsustainable.

E. In view of the above submissions, it is submitted that the Impugned Order is liable to be set aside to the extent it is against the Appellant.

3. Learned AR reiterated the findings in the order in Appeal and specially the content of the following para:

> Para-13. At the outset, it needs to be emphasised that the appellant's case cannot be determined merely by asking whether its name appeared in the Bills of Entry or whether it formally acted as the Customs Broker for the consignments. Penal liability under Section 112 of the Customs Act is not confined to the importer or to a licensed Customs Broker. The statutory enquiry is directed to the act or omission person concerned and its nexus with the goods becoming liable to confiscation, including abetment of such act or omission. Consequently, the plea that appellant did not file the Bills of Entry in its own name or was not formally acting as Customs Broker, though relevant as a factual circumstance, does not by itself conclude the issue of liability. I have also examined the two Bills of Entry produced by the learned Advocate during personal hearing to demonstrate that the appellant had not filed the said Bills of Entry. The said documents establish, at best, that the appellant was not the person who formally filed those Bills of Entry. However, the case against the appellant in the impugned order is not founded merely upon authorship or filing of the Bills of Entry, but upon its alleged participation in the documentary and delivery process connected with the consignments. The said documents, therefore, do not by themselves displace the findings regarding the appellant's role, which are required to be examined independently on the basis of the evidence on record.
>
> Para-14. The undisputed background of the case assumes significance. The 41 Bills of Entry covered consignments whose declared particulars were found, on physical examination, to be materially at variance with the actual goods. The discrepancies were neither isolated nor trivial. They extended to the condition, quantity, description and value of the goods. Goods declared as PCBs were found to include old/used and rejected material. Also, there was a substantial shortage of 19,726 pieces in the physical quantity and restricted/e-waste goods were found without the requisite authorisation. These circumstances establish that the underlying import transactions were affected by serious and substantive irregularities rather than an inadvertent clerical discrepancy.
>
> Para-15. Against this factual setting, the role of the appellant cannot be viewed in isolation. The appellant has acknowledged that documents relating to the import, consignments came into its hands and these documents were delivered to the Shipping Line through the appellant and the appellant obtained the Delivery Order from the Shipping Line and thereafter handed it over for further handling. Thus, this is not a case where the appellant was wholly unconnected with the transaction and happened to come into possession of a document incidentally. The appellant formed part of the chain through which documents necessary for obtaining delivery of the imported consignments were handled and acted upon.

> Para-30. I am also unable to accept the contention that the impugned order is self-contradictory merely because the appellant was not itself the importer. There is a clear legal distinction between the liability of the importer for the substantive import violations and the independent penal liability of another person who, by his acts, omissions or conscious assistance, facilitates the transaction. Sections 112 and 114AA are framed so that liability is not artificially confined to the person whose name happens to appear as importer/exporter in the customs declaration.
>
> Para-31. At the same time, penal provisions must undoubtedly be applied with circumspection. The conclusion reached herein is therefore not based merely on negligence, an error of judgment or the appellant's commercial association with another noticee. It rests upon the appellant's established participation in the documentary and delivery process concerning the impugned consignments, read together with the scale, repetitive character and material nature of the discrepancies detected in the consignments and the findings recorded by the adjudicating authority on the evidence gathered during investigation.
>
> Para-32. On an overall consideration of the material available on record, I find that the appellant has not brought forth any cogent material in appeal warranting displacement of the factual findings recorded by the adjudicating authority regarding its role in the transactions. The appellant has essentially sought to characterise its admitted acts as purely ministerial and innocuous. For the reasons discussed hereinabove, such characterisation does not satisfactorily account for the entirety of the evidence and circumstances recorded in the impugned order.
>
> Para-33. I further find that the penalties imposed are not disproportionate having regard to the nature and scale of the underlying import transactions. The penalty of Rs. 10,00,000/- under Section 112(a)(iii) is substantially lower than the value of the goods involved, and the penalty of Rs. 10,00,000/- under Section 114AA is also well within the statutory ceiling. I find no circumstance warranting appellate interference with the quantum thereof.

Findings:-

4. This court has gone through the rival submissions, the materials on record including the allegation and its culmination in the above impugned order against the present appellant. It finds that in para 31 and 32, in the impugned order, the Learned Appellate Authority has sought to justify the imposition of penalty mainly on the ground that once participation in the documentary and delivery of trail of the impugned consignment is of repetitive character, it gets established that the penalties under Section 112(a) and 114AA get

attracted. The Learned Advocate has relied on the following decisions:

1. Commissioner of Customs (Port) Kolkata vs. M/s A.D. Logistics, 2026 (10) TMI 1257 – Cestat Kolkata
2. M/s KVS Cargo and Him Logistics Pvt Ltd. Vs. Commissioner, Customs (Export) – New Delhi, 2023 (5) TMI 454 – Cestat New Delhi
3. Commissioner of Customs (Import) Vs. Trinetra Impex Pvt. Ltd., 2020 (372) ELT (Del.)

To state that nowhere there is culpatory statement, exhibiting the knowledge of the offending nature of the goods. Even nowhere there is knowledge that the goods were mis-declared, has been brought on record and merely repetitive nature of handling certain documents does not bring him in the ambit of the above section under which appellant has been subject to a penalty. This court finds that in A.D. Logistics (cited supra) it was held that handling of documents without proof of knowledge of offending goods and their nature cannot attract penalty under Section 112(a) and 114AA. Similarly, in KVS Cargo and Him Logistics Pvt. Ltd. (cited supra), it was held that for the person to be subjected to penalty his knowledge has to be shown as in normal course, it is not required to verify authenticity of documents or contents of consignment. In Trinetra Impex Pvt. Ltd., the Hon'ble High Court of Bombay held that when it comes to imposition of penalty under Section 112(a), it is necessary to show that the essential element/ ingredient of mens rea is present and imports on the strength of documents cannot attract penalties both under Section 112(a) and 114 AA. In view of above stated position and the case law as cited by the appellants, the appeal is liable to succeed same is allowed with consequential relief.

(Pronounced in the open court on 04.11.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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