CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH, COURT NO. 4

CUSTOMS APPEAL NO. 87190 OF 2015

[Arising out of the Order-in-Appeal No. MUM-CUSTM-PRV-APP-687-15-16 dated 03.03.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Maneesh Pharmaceuticals Ltd. **...Appellant**
Plot no. 29-22, Ancillary Inds. Plots,
Govandi, Mumbai 400 043.

Versus

Commissioner of
Customs (ACC & Export) Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

with
CUSTOMS APPEAL NO. 87193 OF 2015

[Arising out of the Order-in-Appeal No. MUM-CUSTM-PRV-APP-687-15-16 dated 03.03.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Maneesh Pharmaceuticals Ltd. **...Appellant**
Plot no. 29-22, Ancillary Inds. Plots,
Govandi, Mumbai 400 043.

Versus

Commissioner of
Customs (ACC & Export) Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

with
CUSTOMS APPEAL NO. 87191 OF 2015

[Arising out of the Order-in-Appeal No. MUM-CUSTM-AXP -APP/190,191,194 &195/15-16 dated 03.07.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Maneesh Sapte **...Appellant**
Director of M/s. Maneesh Pharmaceuticals Ltd.
Plot no. 29-22, Ancillary Inds. Plots,
Govandi, Mumbai 400 043.

Versus

Commissioner of
Customs (ACC & Export) Mumbai **...Respondent**
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

with
CUSTOMS APPEAL NO. 87192 OF 2015

[Arising out of the Order-in-Appeal No. MUM-CUSTM-AXP -APP/190,191,194 &195/15-16 dated 03.07.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Maneesh Sapte **...Appellant**

Director of M/s. Maneesh Pharmaceuticals Ltd.
Plot no. 29-22, Ancillary Inds. Plots,
Govandi, Mumbai 400 043.

Versus

Commissioner of
Customs (ACC & Export) Mumbai ....Respondent
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

With
CUSTOMS APPEAL NO. 87245 OF 2015

[Arising out of the Order-in-Appeal No. MUM-CUSTM-AXP -APP/190,191,194 &195/15-16 dated 03.07.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Sunshine Enterprises ...Appellant
10, Sahyog, Mint Road,
Opp. GPO, Mumbai, 400 001

Versus

Commissioner of
Customs (ACC & Export) Mumbai ....Respondent
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

With

CUSTOMS APPEAL NO. 87622 OF 2015

[Arising out of the Order-in-Appeal No. MUM/CUSTM-AXP -APP-377 to 386/2015-16 dated 21.09.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Sunshine Enterprises ...Appellant
10, Sahyog, Mint Road,
Opp. GPO, Mumbai, 400 001

Versus

Commissioner of
Customs (ACC & Export) Mumbai ....Respondent
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

With
CUSTOMS APPEAL NO. 87623 OF 2015

[Arising out of the Order-in-Appeal No. MUM/CUSTM-AXP -APP-377 to 386/2015-16 dated 21.09.2015passed by Commissioner of Customs (Appeals), Mumbai-III]

Maneesh Pharmaceuticals Ltd. ...Appellant
Plot no. 29-22, Ancillary Inds. Plots,
Govandi, Mumbai 400 043.

Versus

Commissioner of
Customs (ACC & Export) Mumbai ....Respondent

Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

with
CUSTOMS APPEAL NO. 87624 OF 2015

[Arising out of the Order-in-Appeal No. MUM-CUSTM MUM/CUSTM-AXP -APP-377 to 386/2015-16 dated 21.09.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Maneesh Sapte ...Appellant
Director of M/s. Maneesh Pharmaceuticals Ltd.
Plot no. 29-22, Ancillary Inds. Plots,
Govandi, Mumbai 400 043.

Versus

Commissioner of
Customs (ACC & Export) Mumbai ....Respondent
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

with
CUSTOMS APPEAL NO. 85560 OF 2016

[Arising out of the Order-in-Appeal No. MUM-CUSTM-AMP-APP-541 &542/15-16 dated 14.12.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Maneesh Pharmaceuticals Ltd. ...Appellant
Plot no. 29-22, Ancillary Inds. Plots,
Govandi, Mumbai 400 043.

Versus

Commissioner of
Customs (ACC & Export) Mumbai ....Respondent
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

with
CUSTOMS APPEAL NO. 85561 OF 2016

[Arising out of the Order-in-Appeal No. MUM-CUSTM-AMP-APP-543 & 544 /15-16 dated 14.12.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Maneesh Sapte ...Appellant
Director of M/s, Maneesh Pharmaceuticals Ltd.
Plot no. 29-22, Ancillary Inds. Plots,
Govandi, Mumbai 400 043.

Versus

Commissioner of
Customs (ACC & Export) Mumbai ....Respondent
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

With
CUSTOMS APPEAL NO. 85608 OF 2016

[Arising out of the Order-in-Appeal No. MUM-CUSTM-AMP-APP-537 & 538 /15-16 dated 14.12.2015 passed by Commissioner of Customs (Appeals), Mumbai-III]

Sunshine Enterprises .....Appellant
10, Sahyog, Mint Road, Opp. GPO, Mumbai 400 001

Versus

Commissioner of
Customs (ACC & Export) Mumbai ....Respondent
Air Cargo Complex, Sahar, Andheri(E) Mumbai 400 099

APPEARANCE:

Shri Anil Balani with Shri Pasi Deepak Kumar, Advocates for the appellant.
Shri Bipin Jadhav, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 86472-86482/2026

DATE OF HEARING : 18.11.2026
DATE OF DECISION: 20.11.2026

P.V. SUBBA RAO

1. **M/s Maneesh Pharmaceuticals Ltd[1]**, **Shri Maneesh Sapte[2]**, the Director of the importer and **M/s. Sunshine Enterprises[3]**, the Customs broker have filed these appeals to assail the Orders passed by the Commissioner (Appeals) upholding the orders of the original authority and rejecting the appeals filed by these three appellants.

2. The importer had filed ten Bills of Entry to clear 'Capsules of Dry Mix Powder of Soy/Tofu & Flaxseed' classifying them the **Customs Tariff Item[4] 12119011/12089000/12119099** of the Schedule to the Customs Tariff Act, 1975 and paid duty accordingly. After the goods were cleared, Show Cause Notices[5] were issued proposing to classify the imported goods under **CTI 2106 90 99,**

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1. the importer
2 Sapte
3 Customs Broker
4 CTI
5 SCN

recover the consequential differential duty under the proviso to section 28(4) of the **Customs Act, 1962[6],** confiscate the imported goods or hold them liable to confiscation under Section 111 of the Act and impose penalties under section 114A of the Act read with section 112 (a) of the Act on the importer. It was further proposed to impose penalties under section 112(a) of the Act on Shri Sapte and the Customs Broker.

3. The proposals in the SCNs were confirmed by the original authority and appeals against the orders were rejected by the Commissioner (Appeals) through the orders impugned in these appeals.

4. We have heard learned counsels for the appellant and learned authorised representative for the Revenue and perused the records. Both sides fairly submit that the question of classification of the same goods in respect of the same importer were decided in favour of the Revenue by this Tribunal in **Final Order No 86631-866632/2019** dated 10.4.2019 and the correct classification of the imported goods was held to be **CTI 2106 90 99.** We have perused that final order and found it so. Relevant portion of the order is reproduced below:

"*6. On careful examination of the report submitted by the Assistant Drug Controller, HSN Notes and product literature, we are of the considered view that the subject goods should appropriately be classified under CTH 21069099, as against the claim of the appellant under CTH 12119099. We also find from the available records that the appellant had accepted before the lower authorities that the imported goods are not classifiable under CTH 12119011 or CTH 12089000. It is also noticed from the original order dated*

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6 Act

24.2.2011 that the subject goods though were held to be liable to confiscation under section 111(m) of the Customs Act, 1962, but no redemption fine was imposed on the ground that the said goods have already been cleared and not available for confiscation."

5. We find no reason to take a different view on the question of classification of the same goods imported by the same importer in subsequent bills of entry which are the subject matter of dispute before us. Consequently, the demand of differential duty also needs to be upheld on merits.

6. Learned counsel for the appellants has, however, vehemently contested the invocation of extended period of limitation under section 28(4) of the Act to raise the demand, imposition of redemption fine, penalties under section 114A of the Act on the importer and penalties under section 112(a) of the Act on Shri Sapte and the Customs Broker. He submits that even in the previous final order, the penalty imposed under section 114A of the Act was set aside. Further, since the issue of redemption fine and other penalties were not decided in the Final Order, an application for Rectification of Mistake was filed which was allowed by Miscellaneous order No. M/85617/2022 dated 4.1.2022. Thus, the redemption fine and all penalties were set aside. He prays that the redemption fine and penalties may also be set aside in these appeals.

7. Learned authorised representative for the Revenue, on the other hand, vehemently supported the invocation of extended period of limitation and penalties and asserted that the impugned orders call for no interference.

8. As far as the limitation to issue the SCNs is concerned, we find that the normal period of limitation under section 28 of the Act was

increased to one year with effect from 8.4.2011 and it was six months before that date. Notices could be issued during both before and after 08.04.2011 within the extended period of limitation of five years if the non-payment or short payment of duty was by reason of any collusion, or wilful misstatement or suppression of facts.

9. In these cases, the importer, while self-assessing the duty, classified the goods under a particular **CTI** in the Bills of Entry as per its understanding and after the goods were cleared by the officers, the department issued SCNs proposing to re-classify them under a different **CTI** and consequently demand the differential duty with interest. Thus, this is a case of difference of opinion and not a case where the importer and the officers have colluded or there was a wilful misstatement or suppression of facts by the importer. It is simply a case of incorrect classification by the importer. The remedy for incorrect classification (or incorrect assessment in any other manner) in self-assessment of duty by the importer under section 17(1) of the Act is the re-assessment of duty by the proper officer under section 17(2) of the Act. If the proper officer does not re-assess and the department discovers the wrong self-assessment, it can initiate proceedings by issuing an SCN under section 28 to recover duties but it should be done within limitation. Extended period of limitation can be invoked only if there is any evidence of collusion, wilful misstatement or suppression of facts. There are none in these appeals. Hence, the demands for extended period of limitation deserve to be set aside.

10. We now proceed to decide the question of redemption fine and penalties assailed in these appeals which are as follows:

Appeal	Appellant	Redemption fine (Rs.)	Penalties (Rs.)
C/87190/2015	Importer	30,00,000	30,00,000 [Section 114A read with section 112(a) of the Act]
C/87193/2015	Importer	5,00,000	3,50,000 [Section 114A read with section 112(a) of the Act]
C/87191/2015	Sapte		30,00,000/- [section 112(a) of the Act]
C/87192/2015	Sapte		5,00,000/-[section 112(a) of the Act]
C/87245/2015	Customs Broker		5,00,000/-[section 112(a) of the Act]
C/87622/2015	Customs Broker		1,00,000/-[section 112(a) of the Act]
C/87623/2015	Importer	-	9,79,385 +penalty equal to interest under sections 28AB/28AA of the Act
C/87624/2015	Sapte		5,00,000/-[section 112(a) of the Act]
C/85560/2016	Importer	-	9,48,490 +penalty equal to interest under sections 28AB/28AA of the Act
C/85561/2016	Sapte		5,00,000/-[section 112(a) of the Act]
C/85608/2016	Customs Broker		1,00,000/-[section 112(a) of the Act]

11. The relevant legal provisions are as follows. Section 111 of the Act renders certain categories of goods liable to confiscation. If the goods are so confiscated, as per section 125 of the Act, the officer adjudicating the confiscation is may, in case of prohibited goods and shall, in case of other goods, give the owner of the goods an option to redeem them on payment of a fine not exceeding the market value

of the goods. The fine so determined is commonly referred to as redemption fine, i.e., a fine imposed in lieu of confiscation. If the goods are not allowed to be redeemed, they are said to be absolutely confiscated which is not the case in these appeals. Even if redemption is allowed, it is up to the owner of the goods to either pay a fine and redeem them or not to redeem them. If the goods are absolutely confiscated or if they are allowed to be redeemed but are not redeemed, it is the responsibility of the adjudicating officer to take possession of the goods as per section 126(2) of the Act. This is for the reason, that on confiscation, the goods vest with the Central Government.

12. Section 112 of the Act provides for imposing penalties on persons for acts or omissions which rendered goods liable to confiscation. This section does not say that the goods should have actually been confiscated but it only requires that the goods should have been rendered liable to confiscation. In some cases, even though the goods were liable to confiscation, they may not be actually confiscated because they are no longer available. However, once the goods are found liable to confiscation, the persons whose acts or omissions rendered them liable to confiscation will be liable to penalties under section 112.

13. Section 114A of the Act provides for mandatory penalty if the duty is not paid, short paid or erroneously refunded by reason of collusion, wilful misstatement or suppression of facts. The quantum of penalty is equal to the amount of duty so not paid or short paid. It may so happen that the duty may have been short paid for the aforesaid reasons and the goods may also be confiscated or may have been held liable to confiscation under section 111 of the Act. In

such a case, penalty cannot be again imposed under section 112 of the Act if a penalty has already been imposed under section 114A of the Act.

14. In these appeals, the imported goods were held liable confiscation under section 111(m) of the Act and for their acts and omissions which rendered them so liable to confiscation, penalties under section 112(a) have been imposed on the Customs Broker and Shri Sapte. Duty was proposed to be recovered from the importer holding that the duty was short paid due to collusion, wilful misstatement or suppression of facts and penalties were imposed on the importer under section 114A read with section 112(a) of the Act. Since penalties were imposed on the importer under section 114A of the Act, no penalties were imposed on the importer under section 112 of the Act.

15. Undisputedly, the importer had filed Bills of Entry classifying goods and after the goods were cleared, the SCNs proposed classifying them under a different heading and recover consequential differential duty. The question of classification was decided by the original authority and the Commissioner (Appeals) as well as by this Tribunal (in previous cases) in favour of the Revenue.

16. The question is whether such an incorrect classification of the goods in the Bills of Entry render the imported goods liable to confiscation under section 111(m) of the Act. The second question is whether the duty so short paid because of the incorrect classification of goods can be said to have been short paid by collusion, wilful misstatement or suppression of facts. The answers to these two questions will help decide issues related to redemption fines and penalties in dispute.

17. Section 111(m) reads as follows:

> **Section 111. Confiscation of improperly imported goods, etc. -** The following goods brought from a place outside India shall be liable to confiscation: -
>
> **...**
> (m) **any goods which do not correspond in respect of value or in any other particular with the entry made under this Act** or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54 ;

18. Goods which do not correspond to the entry made under the Act will be liable to confiscation. The expression 'making an entry' in Customs simply means filing an appropriate document with the Customs to clear the imported goods or to clear the goods intended to be exported. Such an entry is made under section 46 of the Act. It reads as follows:

> **Section 46. Entry of goods on importation. - (1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:**
> **Provided** that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:
> **Provided** further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.
> **.....**

19. Thus, the importer has to make an entry of the imported goods by filing a Bill of Entry electronically in the Indian Customs EDI System (ICES). The person filing the Bill of Entry (either the importer or on his behalf , his Customs broker) also has to give an undertaking that the details contained therein are correct.

20. The Bill of Entry contains details of the nature of goods, quantity packing, weight, value, etc. It also contains columns for

classification of the imported goods, value of the goods, exemption notifications applicable, etc.

21. In addition to making an entry by filing a Bill of Entry under section 46, the importer also has an obligation to self-assess duty under section 17(1) of the Act. However, there is no separate document through which the duty is self -assessed by the importer. The Bill of Entry itself contains all the relevant columns and the importer has to fill in the classification of the goods, value, exemption notifications, etc. and the system calculates the duty accordingly and the importer has to pay the duty. However, the importer is not an expert in assessment of bills of entry and may or may not correctly self-assess the duty in the Bill of Entry. The remedy against any incorrect self-assessment is the re-assessment of duty by the proper officer under section 17(2). Section 17 of the Act reads as follows:

> **Section 17. Assessment of duty. -**
> **(1) An importer entering any imported goods under section 46 , or an exporter entering any export goods under section 50 , shall, save as otherwise provided in section 85 , self-assess the duty, if any, leviable on such goods**.
> **(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary**.
> Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
> (3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
> (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
> (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.
>
> Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the

provisions of section 17 as it stood immediately before the date on which such assent is received.

22. Thus, the only way an importer can self-assess duty is by filling in the necessary columns in the Bill of Entry filed under section 46 online on the customs ICES system. It must also be pointed out that classification of the goods is part of the assessment. Section 2(2) of the Act clarifies this position and it reads as follows:

Section 2. **Definitions**.—In this Act, unless the context otherwise requires,—
…….

(2) '**assessment' means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act** or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, **with reference to—**
(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,
and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

23. What is clear from sections 2(2), 17 and 46 of the Act as discussed above, is that the importer has to self-assess duty and this assessment includes determining the classification of the goods and the importer has to do this by filing the Bill of Entry online. Thus, the Bill of Entry will have factual information such as the nature of the goods, quantity, etc. and also opinions of the importer such as under which CTI, the goods deserve to be classified.

24. We now revert to section 111(m) which states that the goods which do not correspond in value or in any particular to the Bill of Entry will be liable to confiscation. The question is whether the goods

will be liable to confiscation if the goods which are imported do not correspond to the Bill of Entry in terms of description, quality, quantity, etc. or will they also be liable to confiscation if the classification by the importer does not match the subsequent decision by the officers either during re-assessment or in any subsequent adjudication proceedings. The well accepted legal doctrine is *Lex non cogit ad impossibilia* . Law does not compel the impossible. It is possible for the importer to decide what, according to him is the correct classification and file the Bill of Entry accordingly but it is impossible for him to anticipate what classification will the proper officer re-assessing the goods or the adjudicating authority or the appellate authorities would find correct and file the Bill of Entry conforming to such anticipated classification.

25. Thus, insofar as the columns of the Bill of Entry which require one to fill in the opinions such as the classification and exemption notifications is concerned, all that is required of the importer is to file the Bill of Entry as per his opinion. Section 111(m) of the Act does not render the goods liable to confiscation if the classification of the goods by the importer as per his understanding does not correspond to the classification of the goods in the opinion of the proper officer or the adjudicating officer in subsequent proceedings. **Nothing in the entire Act requires the importer to anticipate the future views of the officers and conform to them while filing the Bill of Entry**.

26. Thus, the impugned orders which upheld the confiscation of the goods or held the goods liable to confiscation under section 111(m) of the Act for the reason that their classification in the Bills of Entry did not correspond to the classification by the officers is

completely mis-conceived. The goods were not liable to confiscation under Section 111(m) of the Act in any of the Bills of Entry for that reason.

27. Redemption fine is imposed as an option in lieu of confiscation under section 125 relevant portion of which reads as follows:

> **Section 125. Option to 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 is 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:
> ……

28. Since the confiscation itself is mis-conceived, the redemption fines also need to be set aside.

29. Penalties under section 112 (a) were imposed on Shri Sapte and the Customs Broker. Relevant portion of which 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
> **... shall be liable**, -
>
> (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
> (ii) **in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is highe**r :….

30. Penalty under section 112(a) of the Act is dependent on the goods being rendered liable to confiscation under section 111 of the Act and the person doing or omitting something which rendered the goods so liable to confiscation. Since we have found that the goods were not liable to confiscation under section 111 of the Act at all, the penalties under section 112(a) of the Act on Shri Sapte and the Customs Broker also deserve to be set aside.

31. Penalty under section 114A of the Act is a mandatory penalty equal to the amount of duty sought to be evaded and it can be imposed if duty is not paid or short paid due to collusion, wilful misstatement or suppression of facts. It reads as follows:

> **Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -**
> **Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty** or interest has been erroneously refunded **by reason of collusion or any wilful mis-statement or suppression of facts**, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 **shall also be liable to pay a penalty equal to the duty** or interest so determined:
> **……**

32. The duty has been short paid in these appeals for the reason that the classification of the goods by the importer was found to be not correct by the adjudicating authority, Commissioner (Appeals) and by this Tribunal. There is no evidence of any collusion or any wilful misstatement or suppression of facts. Thus, the elements necessary to impose penalty under section 114A of the Act are not present in these appeals. The penalties imposed on the importer under section 114A, therefore, cannot be sustained and need to be set aside.

33. To sum up:

(i) Classification of the goods imported by the appellant under **CTI 2106 90 99** in the impugned orders and the consequential demands of duty are upheld but only within the normal period of limitation. Demands for extended period of limitation are set aside.

(ii) Bills of entry contain factual data such as nature of the goods, quality, quantity, etc. and also opinion of the importer self-assessing the goods such as the classification of the goods under the Customs Tariff or the eligible exemption notifications.

(iii) The importer has to correctly declare the facts in the Bills of Entry but has no obligation under the Customs Act to anticipate the view which the proper officer may take during re-assessment or the adjudicating officer may take in its orders and to file Bills of Entry conforming to such anticipated views. It is also impossible for the importer to so anticipate.

(iv) Goods will be liable to confiscation under section 111(m) of the Act if they do not correspond to the declaration in the Bills of Entry. The goods matched here with the description and the only difference was regarding the classification. Therefore, the confiscation of the goods under section 111(m) of the Act or holding the goods liable to confiscation deserve to be set aside.

(v) Consequently, the redemption fines on the importer and penalties under section 112(a) on Shri Sapte and the Customs Broker are set aside.

(vi) Penalty under section 114A of the Act cannot be sustained because the short payment of duty was only on account of the difference in classification of the goods and not by reason of collusion or wilful mis-statement or suppression of facts.

34. In view of the above, the appeals filed by the importer are partly allowed upholding the demands of duty with interest within the normal period of limitation and setting aside the demands for extended period of limitation, redemption fine and penalties under section 114A.

35. The appeals filed by Shri Sapte and the Customs Broker are allowed and the penalties imposed on them are set aside.

36. The impugned orders stand modified to the extent indicated above. All appellants will be entitled to consequential reliefs, if any.

(Order pronounced in open court on 20/11/2026.)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(DR. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)