CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 10311 OF 2022

[Arising out of OIA-MUN-CUSTM-000-APP-153-21-22 dated 16.09.2021 passed by Commissioner of Customs (Appeals) Ahmedabad]

M/s. DILLERAO NARAYAN BARRI **Appellant**
78 S H X Janta Colony Gopalpur, Gandhidham,
Gujarat-370 240

Vs.

COMMISSIONER OF CUSTOMS-MUNDRA **Respondent**
Office of the Principle Commissioner of Customs,
Port User Building, Customs House Mundra, Kachchh, Gujarat-370421

Appearance:
Shri Vikas Mehta, Consultant for the Appellant
Shri Sarjeet Kumar, Superintendent (AR) for the Respondent

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10908/2026

Date of Hearing : 10/09/2026
Date of Decision : 26/11/2026

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned Order-in-Appeal dated 16.09.2021 passed by the learned Commissioner (Appeals) Customs, Ahmedabad through which the learned Commissioner upheld the Order-in-Original dated 12.03.2020 passed by the learned Adjudicating Authority / Additional Commissioner Customs, Mundra and rejected the appeal.

1.1 The facts of the case in brief are that the officers of the DRI recovered 100 cartons of cigarettes along with gypsum powder from container no. EMCU 3282219 and WHLU 2580260 covered in Bill of Entry no. 5147743 dated 09.02.2018 filed by M/s Champion Impex Private Limited, Ahmedabad. A Show Cause Notice was issued to the appellant and others. The Show Cause Notice was adjudicated by the Adjudicating Authority / Additional

Commissioner Customs, Mudra vide Order-in-Original dated 12.03.2020 through which the learned Additional Commissioner absolutely confiscated 144000 cigarettes having value of Rs. 41,13,842/- and 35,922 kilograms of plaster of Paris having value of Rs. 5,07,075/-. He also imposed penalty of Rs. 10,00,000/- upon the appellant Shri Dileep Rao Narayan Bari.

1.2 Feeling aggrieved from the Order-in-Original appeal was filed by the appellant before the Commissioner (Appeals) who rejected the appeal and upheld the order passed by the Adjudicating Authority. Feeling aggrieved from the impugned Order-in-Appeal, the present appeal has been filed before this Tribunal.

2. The learned Consultant Shri Vikas Mehta for the appellant submitted that the appellant was never informed by Shri Ramaswami Iyer, Director of the firm M/s. Opus DEI Logistics, Gandhidham, that cigarettes would be imported in illegal manner. These facts can be established from the statement of the appellant recorded by the Revenue Authority which is as under:-

> "*He was working as Branch Manager in M/s. Able Shipping since September 2018 at Gandhidham. On being asked as to why he had contacted Shri Mukesh Makwana of M/s. ASR Logistics India Private Limited (CHA) to enquire about consignment imported in the name of M/s. Champion Impex Pvt Limited, he narrated the events behind said enquiry. He stated that earlier he was working in M/s. OPUS DEI Logistics, Gandhidham; that his director Shri Ramaswamy Iyer (9820896401) during a visit to Gandhidham enquired if any party was ready for clearance of cigarettes to which he responded that he knew one such person named Mr. Pankaj known to him through common friend Shri Mahesh Chauhan of Bhachau; that in the month of January, Shri Ramaswamy informed him that one Mr. Saba will visit Ahmedabad and asked him to arrange his (Saba's) meeting with Shri Pankaj; that accordingly said meeting of Mr. Saba with Mr. Pankaj was took place on 31 October 2017 at Ahmedabad. He further stated that after some days, he received phone call from Mr. Saba who told that Shri Pankaj was not picking his phone and asked me to contact Mr. Pankaj; that on being contacted by him, Mr. Pankaj told him that goods had been seized by DRI which he informed to Mr. Saba; that Mr. Saba provided him contact number of clearing agent (Customs Broker) Mr. Mukesh of M/s ASR Logistics and also told him (Dillerao) to ask him whether documents have been*

received by him or not; that then he contacted Mr. Mukesh to enquire about consignment. On being asked further he stated that after seizure of cigarettes Mr. Saba and his father informed him that they had given Rs. Sixteen Lakhs to Mr. Pankaj for clearance and after receiving the amount, he was not picking their phone; that on instructions of Mr. Saba and Mr. Shri Ramaswamy he contacted Mr. Pankaj many times and also met him once at a hotel at Ahmedabad to ask him to return money back to Mr. Saba."

From the perusal of above mentioned statement of Shri Rama Swami Iyer, Managing Director of the firm M/s. Opus DEI Logistics, Gandhidham, it becomes clear that the appellant was never informed that Shri Rama Swami Iyer and Shri Saba Yusuf would cause the import of cigarettes in illegal manner.

2.1 The learned Consultant for the appellant attracted my attention towards the statement of Shri Rama Swami Iyer as recorded by the Revenue Authority which is as follows:-

"He was Managing Director of M/s. Opus DEI Logistics Private Limited, an NVOCC (I.e. Non vessel owning common carrier) agency. He was shown a photograph of a person whom he Identified as Mr. Saba Yusuf of Delhl. On being asked about him, he stated that Mr. Saba Yusuf was engaged in work of Import and exports; that his family owns a Departmental store in Dubai; that he met Mr. Saba in Dubai and got acquainted with him; that probably during the months of August, September 2017, he enquired him if he (Ramaswamy) could arrange Import of illegal items like cigarettes into India which he flatly denled. That on being constantly persisted he asked his (Ramaswamy) employees at Gandhidham if any person could arrange illegal customs clearance of cigarettes; that Mr. Dillerao, Assistant Manager (Sales) responded positively and thereafter meeting of the person who could arrange illegal clearance of cigarettes was arranged with Mr. Saba at Ahmedabad by Mr. Dillerao. He further stated that later, probably in the month of February 2018, Mr. Dillerao called him and informed that Mr. Saba had shipped a container of cigarettes and that he had come to know through the Ahmedabad person that said container of cigarettes had been seized by DRI at Mundra Port. He Informed me that Mr. Saba had made payment of around 16-17 Lakhs to the Ahmedabad Person whose name he told Mr. Pankaj; that Mr. Saba repeatedly called him to get the money back; that Mr. Saba also called him (Ramaswamy) and informed similar facts and asked for help to get his money back. He further

stated that he asked Mr. Dillerao to try and sort out the matter for return of money to Mr. Saba."

In the light of the above statement he submitted that the appellant had acted in good faith and considering that Shri Rama Swami Iyer was his employer and had enquired upon regarding legal import of cigarettes, the appellant introduced Shri Saba to Shri Pankaj Gohil who arranged IEC of M/s. Champion on his own and without the knowledge of the appellant.

2.2 The learned Consultant for the appellant also argued that the appellant made it clear before the Adjudicating Authority and First Appellate Authority that he was not aware about the plan of the main accused to cause import of cigarettes by resorting to concealment and he had only acted in good faith and had carried out the instructions of his employer without any monetary gain.

2.3 The learned Consultant for the appellant also submitted that they had sought cross examination of Shri Ramaswami Iyer and Shri Mukesh Madhubhai Makwana, Branch Manager of Customs Broker whose statements were taken into consideration while imposing penalty of Rs. 10,00,000/- on the appellant under Section 112A of Customs Act, 1962, but the prayer was rejected by the department.

2.4 The learned Consultant for the appellant also submitted that there is no evidence to suggest that the appellant had any prior knowledge about concealment of cigarettes in the consignment of gypsum powder imported in the name of M/s. Champion Impex Private Limited and to prove that the appellant had introduced Shri Saba Yusuf to Shri Pankaj Gohil with the understanding of concealment of cigarettes in contravention of law.

2.5 The learned Consultant for the appellant also submitted that the appellant is not liable for penalty under Section 112A of the Customs Act, 1962 for he neither imported nor financed, purchased or owned the cigarettes. He

did not book or transport the containers. He did not supply the IEC or KYC documents to the importer. He did not prepare or forward the import documents and did not fill the bill of entry. He did not deal with the Custom Broker before filing the bill of entry and he never participated in examination or attempted clearance. Therefore, the order imposing penalty under Section 112A of the Customs Act is not sustainable.

2.6 The learned Consultant for the appellant also submitted that there is no evidence on the records to show that the appellant participated in the substantive discussion at the meeting between Shri Saba and Shri Pankaj Gohil or he knew what was agreed between Shri Saba Yusuf and Shri Pankaj Gohil or he remained involved during the intervening three months between the meeting between Shri Saba Yusuf and Shri Pankaj Gohil which took place on 31st October, 2017 and 9th February, 2018 when the bill of entry was filed. There is no evidence to prove that the appellant knew the container numbers, vessel, bill of lading, importer, description, or date of shipment, etc. or he communicated with the importer or Customs Broker before importation. There is no link between the October 2017 meeting and import that took place in the month of February 2018.

2.7 The learned consultant for the appellant also submitted that nowhere in the Show Cause Notice it has been alleged that the appellant received any part of Rs. 16-17 lakhs alleged to have been paid to Shri Pankaj by Shri Saba or he received any commission or he was promised any commission. It has not been alleged in the show cause notice that the appellant had any interest in the cigarettes or he communicated with the importer concerning the import or he handled the documents or he stood to benefit from the clearance. There is no evidence that the appellant had prior knowledge about concealment of cigarettes in the consignment of gypsum powder. Therefore, the Adjudicating Authority has erred in passing the Order-in-Original and the learned Commissioner erred in passing the Order-in-Appeal and holding that the

appellant had not produced cogent evidence to counter the allegations of the Revenue. In fact, burden is on the department to first establish ingredients of abetment through reliable evidence and the appellant was not bound to prove his innocence. He has prayed that the impugned order passed by the learned Commissioner may be set aside and the appeal may be allowed.

3. The learned AR reiterated the impugned order passed by the learned Commissioner. He submitted that the Adjudicating Authority has correctly observed that the whole case is based upon the evidence which has already been provided to the noticees and there was no relevance of providing opportunity of cross examination to the appellant. The Adjudicating Authority has addressed to all the contentions raised by the appellant and correctly imposed penalty upon the appellant under Section 112(a) of the Customs Act, therefore, the Commissioner did not find any reason to interfere in the Order-in-Original so far as it relates to imposition of penalty on the appellant. He has prayed that the impugned order may be upheld and the appeal may be rejected. He has relied upon the following judicial pronouncements:-

(a) **Naresh J Sukhawani** vs. **Union of India** – 1996 (83) ELT 258 (SC)

(b) **K I Pavunny** vs. **CCE, Cochin** – 1997 (90) ELT 241 (SC)

(c) **CC** vs. **K M Ganatra & Co** – 2016 (332) ELT 15 (SC)

(d) **CCE, Mumbai** vs. **Kalvert Foods I P Ltd –** 2011 (270) ELT 643 (SC)

4. I have heard the learned Consultant for the appellant and the learned AR for the department and perused the records.

4.1 The Commissioner (Appeals) has observed in the Order-in-Appeal as follows:-

> *"Regarding the role of the appellant in the smuggling of cigarettes which lead to imposition of penalty, the adjudicating authority at paragraph 16.7 of the impugned order had recorded his findings and observed that the appellant had deposed in his statement dated 28.11.2018 recorded under Section 108 of the*

Customs Act 1962 that Mr. Ramaswamy N. Iyer, Managing Director of M/s OPUS DEI Logistics Pvt. Ltd asked if they could find someone who could arrange illegal clearance of cigarettes, He has admitted in his statement that for the purpose of illegal clearance of cigarettes he suggested the name of Mr. Pankaj Gohil and later arranged meeting of Mr. Saba Yusuf, the person who wanted to smuggle cigarettes into India, with Mr Pankaj Gohil, the person who he believed could arrange illegal custom clearance of cigarettes. These facts have also been corroborated by Mr. Ramaswamy N. lyer in his statement recorded under Section 108 of the Customs Act 1962 on 06.12.2018. The adjudicating authority found that right from the act of suggesting name of Mr. Pankaj Gohil to Mr. Ramaswamy and through him to Mr. Saba Yusuf and arranging meeting of Mr. Saba Yusuf and Mr. Pankaj Gohil, it was quite clear to Mr. Dillerao Narayan Barri that his action were going to lead to smuggling of cigarettes into India. Further, after seizure of cigarettes, he called Customs Broker enquiring about receipt of original documents. These events clearly indicated that he was aware of the fact of consignment containing cigarettes was being attempted to be illegally cleared and that original documents pertained to the very said consignment. Therefore, the adjudicating authority has correctly observed that Mr. Dillerao Narayan Barri has clearly abetted such illegal acts which have rendered 14,40,000 sticks of cigarettes of Gudang Garam brand valued at Rs.41,13.842/-liable to confiscation. The adjudicating authority also stated in his findings that the appellant had not produced any concrete evidence to counter the allegations raised in the SCN and just asked for cross examination of persons whose statements are relied upon. The adjudicating authority observed that primary objective of cross examination is to seek information of any deviation on the part of the investigating officers and to ascertain whether the case is made out of genuine or malafide actions of the offenders or the case is just foisted without adequate justification. The adjudicating authority observed that in the case of D. Bhoormul-1993 (13) ELT.1546 (SC) it was held that the provisions of Evidence Act as well as Code of Criminal Procedure, in terms are applicable to the adjudication proceedings. He further observed that Hon'ble Madras High Court in the case of K. Balan-1982 (10) ELT.386 (Mad) has held that the right to cross examination is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. In the present case, the adjudicating authority correctly observed that, whole case lies upon the evidences which have already been provided to the noticees and there is no relevance of cross examination. Thus, I find that, the adjudicating authority has addressed all the contentions raised by the appellant and, accordingly, correctly imposed penalty under Section 112(a) of the Customs Act 1962. Therefore I do not find any reason to interfere in the impugned order so far as it relates to imposition of penalty on the appellant."

4.2 After going through the impugned order as mentioned above and material available on record including the statements of the appellant Dillerao Narayan Barri and Shri Rama Swami Iyer recorded by the Revenue Authorities under Section 108 of the Customs Act. I am of the view that the learned Adjudicating Authority and the learned Commissioner rightly observed in their orders that the appellant Shri Dillerao Narayan Barri, for the said purpose of illegal clearance of cigarettes, suggested the name of Mr. Pankaj Gohil and later arranged meeting of Mr. Saba Yusuf, with Mr. Pankaj Gohil, the person who he believed could arrange illegal custom clearance of cigarettes. These facts have also been corroborated by Mr. Ramaswami Iyer in his statement. Therefore, right from the act of suggesting name of Mr. Pankaj Gohil to Mr. Ramaswami Iyer and through him to Mr Saba Yusuf and arranging meeting of Mr. Saba Yusuf and Mr. Pankaj Gohil, it was quite clear to Mr. Dillerao Narayan Barri that his action would lead to smuggling of cigarettes into India. Further after seizure of cigarettes, he called custom broker inquiring about receipt of original documents. These events clearly indicate that he was aware of the fact that the consignment containing cigarettes was being attempting to be illegally cleared and that original documents pertain to the very said consignment. Therefore, Mr. Dillerao Narayan Barri has clearly abetted such illegal acts which have rendered 14,40,000 sticks of cigarettes of Godang Garang Brand valued at Rs. 41,13,842/- liable to confiscation under Section 111(d), 111(f), 111(l) and 111(o) and 35922 kg of plaster of Paris valued at Rs. 5,07,075/- liable to confiscation under provisions of Section 111(m) of the Customs Act, and therefore, Shri Dillerao Narayan Barri is liable to penalty under Section 112(a) of the Customs Act and there is no need to interfere in the findings of the learned Adjudicating Authority and the learned First Appellate Authority.

4.3 As far as the imposition of penalty upon the appellant is concerned, I am of the view that the amount of penalty appears to be exorbitant, harsh

and excessive. In view of the value of the subject goods and nature of role allegedly played by the appellant, I am of the view that the penalty should be reduced to Rs. 1,00,000/- only which will be proper and reasonable in the circumstances of the case.

4.4 In view of the above discussion, I am of the view that appeal is liable to be partly allowed and the impugned order passed by the learned Commissioner (Appeals) and the learned Adjudicating Authority is liable to be modified to that extent the penalty of Rs. 10,00,000/- imposed upon the appellant Shri Dillerao Narayan Barri is reduced to Rs. 1,00,000/- under Section 112(a) of the Customs Act, 1962.

5. The appeal is accordingly partly allowed as above.

(Order pronounced in the open Court on 26.11.2026)

(AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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