

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10642 of 2024-DB

(Arising out of Order in Original MUN-CUSTOM-000-COM-22-24-25 Dated 27/08/2024 passed by Commissioner of Customs-Mundra)

SHRI HANIF KAPADIA

2704, A Wing, Orchid Enclave,
Belasis Road Mumbai Central, Mumbai-400008

.....Appellant

VERSUS

Commissioner of CUSTOMS - Mundra Customs

.....Respondent

Office of Pr. Commissioner of Customs,
Custom House, Mundra-Kutch,
Mundra Port Special Economic Zone,
Mundra-Gujarat-370421

WITH

- (i) Customs Appeal No.10643 of 2024-DB (SHRI PARWEJ ALAM)
- (ii) Customs Appeal No.10644 of 2024-DB (SHRI DIRGESH DEDHIA)
- (iii) Customs Appeal No.10645 of 2024-DB (SHRI SARFARAZ KAMANI)
- (iv) Customs Appeal No.10646 of 2024-DB (RAJYOG ENTERPRISES)
- (v) Customs Appeal No.10647 of 2024-DB (SHRI ASIF SATHI)
- (vi) Customs Appeal No.10648 of 2024-DB (SHRI PARWEJ ALAM)
- (vii) Customs Appeal No.10649 of 2024-DB (SHRI DIRGESH DEDHIA)
- (viii) Customs Appeal No.10650 of 2024-DB (SHRI HANIF KAPADIA)
- (ix) Customs Appeal No.10651 of 2024-DB (SHRI ASIF SATHI)
- (x) Customs Appeal No.10652 of 2024-DB (SHRI DIRGESH DEDHIA)
- (xi) Customs Appeal No.10653 of 2024-DB (SHRI PARWEJ ALAM)
- (xii) Customs Appeal No.10654 of 2024-DB (SHRI HANIF KAPADIA)
- (xiii) Customs Appeal No.10719 of 2024-DB (SKYBLUE INTERNATIONAL TRADING COMPANY)
- (xiv) Customs Appeal No.10720 of 2024-DB (SHRI ASIF SATHI)

[(Arising out of Order in Original MUN-CUSTOM-000-COM-20-24-25 Dated 27/08/2024 passed by Commissioner of Customs-Mundra), (Arising out of Order in Original MUN-CUSTOM-000-COM-21-24-25 Dated 27/08/2024 passed by Commissioner of Customs-Mundra), (Arising out of Order in Original MUN-CUSTOM-000-COM-20-24-25 Dated 27/08/2024 passed by Commissioner of Customs-Mundra)]

APPEARANCE:

Shri Hardik Modh with Shri Amit Laddha, Advocates appeared for the Appellants
Shri Sanjay Kumar, Superintendent (AR) appeared for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 13094-13108/2024

DATE OF HEARING: 25.11.2024
DATE OF DECISION: 05.12.2024

RAMESH NAIR

These fifteen appeals are filed against respective Orders-in-Original, since issue involved, arise from a common investigation carried out by the Directorate of Revenue Intelligence, these appeals are taken up together for

disposal. We are taking the facts of Appeals filed by appellant Shri Asif Sathi and M/s. Skyblue International Trading Company.

1.1 The brief facts leading to this case are that Directorate of Revenue Intelligence, Surat intercepted Vehicle No. GJ 12BV 0610 on 01.09.2022 near Palsana Chowkdi on the National Highway, Surat. During interception, 107 cartons of e-cigarettes were found. Simultaneously the DRI Gandhidham gathered intelligence that container bearing No. TGBU5160748 was imported by Shri Asif Sathi and Shri Sarfaraz in name of J.H. Enterprises and suspected to have concealed e-cigarettes. It was found that the above persons imported around 18 containers in the month of September 2022 and lying at different places. During examination of the 18 containers, it was found that the Appellants including the other importers mis-declared description of the goods. Further, some of the import consignments were found containing mobile phone accessories such as tempered glass, earphone/headphone/back cover etc. having marking different companies, such as Samsung, Boat, Vivo, Oppo, apple etc. The most of the goods were found mis –declared with respect of their description, value and quantity etc.,

1.2 During the investigation, statements of various persons were recorded. The DRI officers appointed Chartered Engineer to ascertain correct value of the mis-declared items of the imported goods. The Chartered Engineer submitted the report which indicated that the value of the goods was grossly mis-declared. Therefore, the investigating authority alleged that the value declared by the Appellants in corresponding Bills of Entry and invoices did not appear to be true value under the provisions of Section 14 of the Customs Act read with the provisions of the Customs Valuation Rules, 2007. The above investigation was culminated into issuance of Show Cause Notice dated 30.08.2023. In adjudication, Ld. Adjudicating authority by impugned order dtd. 27.08.2024 confirmed the duty demand and imposed the penalties on appellants and co-appellants. He also orders for confiscation of impugned goods, however give an option to the importer to redeem the confiscated goods on payment of redemption fine. Hence the appellants filed the present appeals.

2. Shri Hardik P. Modh, Learned Counsel with Shri Amit Ladha Ld. Advocate appearing on behalf of the appellants submits that the Respondent failed to appreciate that the investigating authority solely relied upon the report of Shri Kunal Ajaykumar, Chartered Engineer (appointed by DRI) alleging against the

Appellant in respect of undervaluation of the imported goods. The Chartered Engineer without making any inquiry, adopted the domestic market value of the imported goods on the basis of following parameters:

- Quality of the product;
- Availability of the product pan India;
- Quantity of the product;
- Online presence of the product;

Abundance of the same / similar product in the local market.

2.1 He also submits that the report of Chartered Engineer ought not to have been relied upon as the Chartered Engineer has not provided any substance to arrive the value declared by him and completely failed to specify the reasons as to how the imported goods had been undervalued by the Appellant. The Ld. Adjudicating authority failed to appreciate that when a Chartered Engineer is tasked with valuing imported goods, it is crucial to compare the value of these goods with the international price of similar imports in terms of quality and quantity from the same country. This ensures an accurate and fair assessment of the goods value. By following these steps, a Chartered Engineer can provide a well-founded valuation of imported goods, ensuring it reflects the true international market value for similar quality and quantity imports from the same country.

2.2 He further submits that the Ld. Adjudicating authority ought to have appreciated that the Appellant addressed various letters to the customs department stating that the valuation adopted by the Chartered Engineer is highly excessive and requested re-valuation of the imported goods. But, the department failed to consider such request of the Appellant. Hence, the valuation adopted by the Chartered Engineer is required to be discarded at the outset.

2.3 Without prejudice, he also submits that the goods imported by the importer are freely available in the market (online and offline market / retail market). He submitted the print outs obtained from the website of www.amazon.in showing the price of various similar / identical products in online market for illustration purpose. Copies of print outs obtained from the website of www.amazon.in showing the price of various similar / identical products in online market.

2.4 He argued that the retail price available at online market changes from company to company, size, quantity, nature of product, characteristic etc. Further, it is to be noted that the imported goods were imported in bulk quantity and therefore, the import price is well below the retail price of online market. Therefore, the Revenue department ought to have taken the price of contemporaneous import for calculating the assessable value in the present case.

2.5 He also submits that valuation has to be considered in the present matter in terms of Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The valuation adopted by the Department under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is incorrect and therefore not sustainable in the eyes of law. The value of imported goods like exercise book, Hair Trimmer, Back Cover, Hair Dryer, Hair Straightener, Earphone, Water Bottle, Vegetable Cutter, Tempered Glass etc. were easily identifiable from the international market as well as on the basis of Bills of entry filed by various other importers across the country and therefore, the reliance placed upon Rule 9 is not sustainable in the eyes of law. Had there been any intention on the part of the department to identify the market value of the goods, they could have easily found the same from the NIDB data which presents the details with respect to every import made in India. He placed reliance on the following judgments.

- (i) CCE Vs. M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd. -2019 (365) E.L.T. 3 (S.C.),
- (ii) CCE Vs. M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd 2019 (365) E.L.T. 3 (S.C.)
- (iii) Century Metal Recycling Pvt. Ltd. Vs. Union of India, 2019 (367) ELT 3 (SC)
- (iv) Commissioner of Customs, Calcutta Versus South India Television (P) Ltd., 2007 (214) E.L.T. 3 (S.C.),

2.6 He further submits that the Ld. Adjudicating authority ought to have appreciated that in 1 container Bill of Entry was assessed finally and the same was not challenged by the department till date. Further, the burden to challenge the valuation lies with the department which the department has completely failed to establish. Accordingly, the reliance sought to invoke Rule 9 of the Rules is baseless and not sustainable in the eyes of law.

2.7 Without prejudice, he also submits that with respect to 4 consignments where Bill of Entry has not been filed, the department has considered the value as provided by the Chartered Engineer in its valuation report. As pointed above, there were many deficiencies in the valuation report provided by the Chartered Engineer and therefore, the valuation provided in its report is not justifiable and such report cannot be considered for valuing the present consignments. Therefore, the impugned order is illegal and contrary to the provisions of law and the same deserves to be quashed and set aside.

2.8 He also submits that Ld. Adjudicating authority failed to appreciate that the statements of the Appellants, Shri Tahir **Menn**, Shri Parvej Alam, Shri Baldevsinh Vala, Shri Hanif Kapadia were recorded from time to time by the department, but no question was raised in respect of valuation of the imported goods like exercise book, Hair Trimmer, Back Cover, Tempered Glass etc. and therefore, the Respondent has not put any evidence with respect to discard the value of the goods declared by the Appellants apart from the report of Chartered Engineer. The Respondent ought to have first investigated the case in respect of valuation of the goods whether the Appellant correctly declared value or not. The investigating authority ought to have sought justification for value of the imported goods from the Appellant and Co-Appellant. Since, in the present case the Revenue completely failed to investigate and examine the correct value of the imported goods and therefore, the impugned order enhancing value of the imported goods is completely baseless and devoid of any merits.

2.9 He also argued that the Ld. Adjudicating authority erred in holding that no business activities were noticed when the DRI officials visited the declared premises of the Appellant. The Ld. Commissioner ought to have appreciated the fact that pursuant to the import of goods, the goods were sent to warehouse/godown of Mr. Asif Sathi who was using IEC of the Appellants. The lending of IEC is not illegal in nature and the law does not restrict the IEC holder from lending the IEC to any person who wishes to import the goods. In the present case, the IEC holder lend the IEC to Mr. Asif Sathi who carried the imported goods to his godown/warehouse located at Mumbai. In such circumstances, merely no business activities were noticed at the time of investigation would not lead to alleged smuggling of goods. The Respondent failed to consider that there is no provision under the Customs Act, 1962 which prohibits the use of IEC of third party who is holding valid IEC Number. The

Appellant cannot be made liable for the alleged imports made in the name of IEC holders. He placed reliance on the following judgments.

- (i) Hamid Fahim Ansari Vs. CC (Import), Nhava Sheva, - 2009 (241) E.L.T. 168 (Bom.)
- (ii) Proprietor, Carmel Exports & Imports v. CC, Cochin - 2012 (276) E.L.T. 505 (Ker.),

2.10 He also submits that had there been any discrepancy found by the licensing authority in respect of misuse of IEC, they could have cancelled / suspended the IEC. It is a settled position of law that when a fiscal benefit is granted on the basis of a certificate issued by another statutory authority, it is only that statutory authority which is empowered to monitor compliance of the conditions of the certificate and to initiate action, in case of non-compliance. He placed reliance on the following decisions:

- Zuari Industries Ltd. vs. Commissioner of C. Ex. & Customs, 2007 (210) E.L.T. 648 (S.C.);
- Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi, 2003 (151) E.L.T. 254 (S.C.)

2.11 He further submits that the Ld. Commissioner ought to have appreciated that IEC holder has permitted the Appellant to use their IEC and has never raised any objection for such use of IEC. In such circumstances, the basis for denial of import in the name of IEC is completely baseless and illegal. Further, the IEC holder has always participated in the investigation and adjudication proceedings and therefore, the Appellant cannot be made liable for the use of IEC. The Ld. Commissioner ought to have appreciated that the department has not produced single evidence to show that the Appellant was involved/abetted in the alleged offence. In such circumstances, the case booked against the Appellant is illegal and not sustainable in the provisions of law.

2.12 He also submits that the Ld. Commissioner erred in holding that the Appellant had willingly and deliberately indulged in the conspiracy of importing and clearance of prohibited goods i.e. Toys and other offending goods. The Ld. Commissioner ought to have appreciated that had there be any involvement of the Appellant in the alleged import, the department could have unearthed some evidence to that effect like correspondences, chat, diaries,

flowback of money, accounting entries, etc. Failing which, the action of Respondent is totally illegal and against the provisions of law.

2.13 He also submits that the Ld. Commissioner ought to have appreciated that compulsory registration under Paper Import Monitoring System (PIMS) was made effective from 01.10.2022 for import of exercise book. In the present case, admittedly the goods were alleged to be imported in August, 2022 and therefore, Notification No.11/2015-2020 dated 25.05.2022 issued by DGFT will not be applicable in the present case

2.14 He also argued that the Ld. Commissioner failed to appreciate that the goods are not liable for confiscation under Section 111(d), 111(f) and 111(m). The impugned order confiscated toys under section 111 (d), 111(f) and 111(m) for whereas for the other disputed items, the Ld. Commissioner confiscated the goods under Section 111(f) and 111(m). The "Toys" are not liable to confiscation as Section 111(d). The said clause applies only when any goods are imported or attempted to be imported against any prohibition in force. It is not the case of the department that the imported goods are prohibited. It is only due to lack of BIS certificate, the Respondent has not allowed to import the "Toys". Therefore, Section 111(d) has no application.

2.15 He also submits that the Ld. Commissioner erred in not considering that Section 111(f) is not attracted in the facts and circumstances of the present case as the said provision is applicable in cases wherein the dutiable or prohibited goods which are required to be mentioned in the arrival manifest or import manifest which were not mentioned by the importer. In the present case, the Appellant declared all the details with respect to dutiable or prohibited goods like description, quantity, chapter code, HSN etc. and therefore, there is no mis-declaration on the part of the Appellant. As mentioned above, due to supplier's mistake, the Appellant received excess and unmanifested goods which was never being ordered by them. The Appellant has made elaborate submissions above to demonstrate that he was not involved in the alleged offence and therefore, Section 111(f) will not be attracted in the present case. The Ld. Commissioner grossly erred in not considering that Section 111(m) can be invoked on account of the alleged mis-declaration of value. As already submitted, the Appellant has correctly declared the value of the goods in terms of Section 14 of the Customs Act read with Rule 3 of the Rule and therefore, Section 111(m) is not attracted in the facts and circumstances of present case.

2.16 He also submits that the Ld. Commissioner erred in holding that the Appellant -Asif Sathi was the mastermind in the disputed transactions and therefore, he is liable to pay penalty under various sections under the provisions of Customs Act, 1962. It is pertinent to note that the said finding is without any direct/indirect evidence to establish that the Appellant had any knowledge of the alleged act. In the present case, there were no evidence/documents placed by the Revenue which shows that the Appellant had intentionally mis-classified the imported goods and therefore, penalty cannot be imposed.

3. On other hand Shri Sanjay Kumar, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned orders.

4. Heard both sides and after considering the submissions of both the parties and perusal of the material on records we find that present case arises out of examination and seizure of the imported goods pertaining to 18 import consignments. We find that M/s Skyblue International Trading Company have imported total 5 import consignment which were examined by the officers of DRI and during examination of the goods mis-declaration were observed in respect of value, quantity and other material particulars. The Ld. Commissioner in impugned order held that the declared value in respect to the containers is liable to be rejected under Rule 12 of the CVR, 2007 and to be re-determined under Section 14 of the Customs Act, 1962 readwith Rule 9 of the CVR, 2007. The report of the Chartered Engineer merits to be considered as the basis for arriving at assessable value of impugned goods. The Ld. Commissioner relied upon the Chartered Engineer reports and enhanced the value in terms of Rule 9 of the Customs Valuation Rules.

4.1 We find that in the present matter the declared transaction value was arbitrarily rejected by adjudicating authority only to restore the Rule 9 of CVR, 2007 i.e. Residual method. Which provide as under

- "(I) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India : Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of

importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.”

We noticed that there are two conditions in this rule, first, value shall be determined using reasonable means consistence to the Valuation Rules and data available in India, secondly value so determined should not exceed the price of such/like goods sold in course of international trade. Adjudicating authority adopted valuation of goods based on report of Chartered Engineer and found that the value of the goods was grossly mis-declared. However we find that there was no material evidence on record in impugned order that how Chartered Engineer worked out the computed value of the disputed goods. We find that the Chartered Engineer completely failed to provide the justification as to what was the difference in the quality imported by the Appellant vis-a-vis the quality of goods which had been examined for arriving at the assessable value. The Chartered Engineer also failed to provide the details with respect to who were the suppliers / manufacturers for the goods which were examined against the imported goods to arrive the conclusion that the disputed goods are undervalued. Also, what were the differences with respect to the specification and characteristics of the goods making it differentiable with respect to the imported goods. It is also not provided what quality parameters were examined so as to differentiate the two products.

4.2 Firstly, the Chartered Engineer ought to have ascertained international price of the disputed goods. Goods imported by the Appellant are easily available in the international market. In terms of the Customs Valuation Rules for imported goods, the Chartered Engineer ought to have ascertained whether any other importer in India, imported the identical or similar goods from the same supplier and/or from the same country. If it is found that none of the importers, imported identical and/or similar goods in India from the same country, then, the Chartered Engineer ought to have adopted the value of the goods available in domestic market. We find the report relied upon by the revenue is silent on this aspect. Further, the Chartered Engineer failed to provide any information how he arrived on the value of goods based on availability of the products in India. The Chartered Engineer failed to provide any justification as to how he analyzed the availability of products in the domestic market. The Chartered Engineer was expected to provide details of the places where he visited to reach a conclusion regarding value of the imported goods. It is an obligation upon the Chartered Engineer to provide

details of the products which had been examined to compare with the imported goods, name of the stores, places and other details to arrive value of the disputed goods. However, the Chartered Engineer thoroughly missed to provide the details about such availability of the product in India. The Chartered Engineer ought to have provided the details for each of the imported goods and their availability in the local market along with all necessary details so as to enhance the value of imported goods.

4.3 It is settled law that when customs authority would like to compare value of the imported goods with identical goods and/or similar goods, it is an obligation upon the authority to ascertain whether other importer/buyer imported or purchased similar quantity of the goods. It is general practice that when a person imports/buys the goods in bulk, the price would be different from the retail price. Various factors are taken into consideration while arriving value of the goods. In general, the unit cost of goods imported in smaller quantities tends to be higher than the unit cost of goods imported in bulk quantities. This is primarily due to economies of scale, where the cost per unit decreases as the quantity of goods produced or purchased increases. Suppliers often offer lower prices per unit for larger orders as an incentive for buyers to purchase more. Shipping costs are typically lower per unit when goods are shipped in bulk. Smaller shipments might still incur similar base costs, making the per-unit shipping cost higher. Smaller quantities often require more packaging and handling per unit, which increases costs. Long-term or larger buyers might negotiate better prices due to their consistent and substantial orders. The administrative overhead for processing orders, customs, and logistics can be spread over more units in bulk orders, reducing the per-unit cost. Thus, the value or cost per unit for small quantity of imports is generally higher than for bulk imports.

4.4 We find that The Chartered Engineer failed to provide any details with respect to which same / similar products were examined before arriving at the assessable value of the goods. He was obligated to provide all the details of same / similar product in the local market like place of dealer / seller of the local market and its credibility in the local market, Reliability of such local dealer, reasons for non availability (if any) of particular product, demand and supply of such product from different suppliers / manufacturers etc. The Chartered Engineer made a conclusive report and provided the market value of the goods without explaining the statistics as to how the market value has been arrived by him.

4.5 In such circumstance there are no reasonable grounds/justification on record to enhancement of value based on Chartered Engineer's certificate by applying Valuation Rule 9 of CVR, 2007. On the report of Chartered Engineer, the enhancement of the value by the Ld. Commissioner in the present matter legally not correct and we therefore set aside the same.

4.6 We also find that the goods imported by the importer are available in the market, the appellants also produced the printouts obtained from the websites of www.amazon.in showing the price of the similar/identical goods. The appellant also produced the Bills of entry filed by various other importers who imported indicial/similar goods. In such circumstance we are of the view that the price of contemporaneous import/NIDB for calculating the assessable value has to be taken.

4.7 We also find that the Ld. Commissioner in impugned order held that the import of exercise book, the import requires compulsory registration under Paper Import Monitoring Systems, however we notice that the disputed goods were alleged to be imported in August 2022 and whereas compulsory registration under paper import monitoring system (PIMS) was made effective from 01.10.2022 for import of exercise books. Hence such registration is not required.

4.8 We also find that in the present case, the IEC holder lent the IEC to Mr. Asif Sathi who carried the imported goods to his godown/warehouse located at Mumbai. In such circumstances, merely no business activities were noticed at the time of investigation would not lead to alleged smuggling of goods. In this context we also find that there is no provision under the Customs Act, 1962 which prohibits the use of IEC of third party who is holding valid IEC Number. In view of the above, the Appellant cannot be made liable for the alleged imports made in the name of IEC holders. We also find support from the case of Hamid Fahim Ansari Vs. CC (Import), Nhava Sheva, -2009 (241) E.L.T. 168 (Bom.) (*supra*), wherein it was held as under:

"5. In other words, imports have been done in the name of the petitioner but for some other person. In so far as respondents/Customs Authorities is concerned, they have not pointed out to us any provision under the Customs Act or any Rule or Regulation framed thereunder by which the person having

valid IEC Number and having paid the custom duty is prevented from importing goods. At the highest, if the petitioner has obtained IEC number by misrepresenting the Ministry of Commerce and Industry and Director General of Foreign Trade, it is for that body to take action.

6. In these circumstances, in our opinion, petitioner having paid the custom duty is entitled to release of the goods. We, therefore, direct respondents to release the goods within 48 hours from today."

Similarly, In the matter of Proprietor, Carmel Exports & Imports v. CC, Cochin - 2012 (276) E.L.T. 505 (Ker.), it was held as under:

"15. Coming to the submission that the appellant is only a "name lender" for the import of goods by one Anwar, we shall presume for the time being that the appellant is only a name lender, but the actual beneficiary of the import is one Anwar. We called upon learned counsel for the respondents to place the relevant provision which prohibits such an activity on the part of an Import Export Code Number holder. Learned counsel for the respondents categorically made a statement that he is not able to place any such prohibition in law except Section 7 of the Foreign Trade (Development and Regulation) Act, 1992, which reads as follows :-

"7. Importer-exporter Code Number. - No person shall make any import or export except under an Importer-exporter Code Number granted by the Director-General or the officer authorised by the Director General in this behalf in accordance with the procedure specified in this behalf by the Director General".

The expression "import" occurring in the said section means bringing into India of goods as defined under Section 2(e). There is nothing in the law which requires an importer to be either the consumer or even the buyer of the goods also. Even otherwise, we are of the opinion that it is a matter of common sense that no importer would consume all the materials imported. Necessarily, the goods imported are meant for sale to the consumer, in which case, if an importer, who enjoys the facility of I.E. Code imports certain goods in the normal course of business on the strength of a contract entered by such importer with either a consumer or a

trader who eventually sells the imported goods to consumers. We do not understand what can be the legal objection for such a transaction especially where the import of such goods is otherwise not prohibited by law. At any rate, if the respondents have any tenable legal objection on that count, the respondents must pass an appropriate order indicating the legal basis on which the action is proposed and also the nature of the action proposed for such perceived violation of law on the part of the respondents after giving a reasonable opportunity to the importer to meet the case against him, Instead of proceeding to determine the duty leviable on the imported goods by following the appropriate procedure or passing an order of confiscation if they believe that they are justified in the facts and circumstances, the respondents, it appears, are indefinitely detaining the goods without, any appropriate order being passed thereon. Such a course of action, in our opinion, is absolutely illegal.”

4.9 As regard the imposition of penalties on the co-appellants namely Shri Hanif Kapadia, Shri Parwej Alam and Shri Dirgesdh Dhedhia under Section 112, 114A and 114AA of the Customs Act, 1962, we find under Section 112(a) penalty is imposable on any person who in relation to any goods does or omits to do any act which act would render the goods liable for confiscation under Section 111 of the Act or abets the doing or omission of such act. Similarly, penalty under Section 112 (b) is imposable when a person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111. Penalty under Section 112(a) can be invoked in the situations as prescribed. In the present case, since none of the situations is covered and therefore, penalty under Section 112(a) cannot be imposed. The term “abetment” is defined under Section 107 of the Indian Penal Code 1860 as under:

“107.A person abets the doing of a thing, who First – Instigates any person to do that thing; or secondly - 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 Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.:

Explanation 1 : A person who, by willful misrepresentation, or by willfully 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"

Penalty under Section 112 (a) of the Act can be imposed only if it proves beyond doubt that the person concerned and by his act of omission or commission rendered the goods liable for confiscation or is held that the said goods with the knowledge or reason to believe that the same are liable for confiscation. In the present case, except the report of Chartered Engineer and statements of various persons, there are no any other evidences which shows that the Appellants abetted the office for which the goods are liable for confiscation. In the present case undisputedly, the Appellant did not have knowledge about contents of the goods in containers and therefore, the question of abetment in the alleged offence does not arises. We also find that no evidence is adduced by the Revenue to show that the Appellant had any knowledge or reason to believe that the goods were liable to confiscation while dealing with goods.

4.10 We also find that the penalty under Section 114A is imposable only when 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. In the present case, there is no such suppression etc. that has resulted in any short payment of duty. Therefore, penalty under Section 114A of the Customs Act is not imposable.

4.11 We also find that penalty under Section 114AA is also not imposable on the appellants. There is no evidence on record to show that the Appellant deliberately violated the provisions of law and mis-classified the goods. The Revenue has not placed any facts to show that there was any *malafide* intention on the part of the Appellants in alleged mis-classifying the goods. As the ingredients for invocation of provisions of Section 114AA are absent in the present case penalty under the said section is not justified. This Tribunal's Bangalore bench has in case of *Ismail Ibrahim* [2019 (370) E.L.T. 1321 (Tri. - Bang.)] held as follows :

"6.3 Further penalty under Section 114AA of the Customs Act is concerned, I find that the penalty under Section 114AA can only be

imposed if the 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. Further I find that in the present case, the appellants have not made intentionally any false sign or declaration, incorrect statements or declarations to attract penalty under Section 114AA of the Act. Therefore I set aside the penalty imposed under Section 114AA of the Customs Act, 1962 on both the appellants."

4.12 In the case of *Jitender Singh* [2019 (369) E.L.T. 1683 (G.O.I.)] following has been held :-

"4. Government also agrees with the applicant's plea that penalty under Section 11AA of Customs Act, 1962 is also not maintainable in this case as the Section is attracted only where false declaration/statement document is used. But no such false declaration, etc., was made by the applicant and rather the case against the applicant is that he did not declare the TV to the Customs authorities for which Section 112 is appropriately attracted. Therefore, the justice and fairness demands that penalty of Rs. 25,000/- will be sufficient under Section 112 of the Customs Act on the applicant in this case for carrying the TV for ulterior design of smuggling of TV for monetary consideration."

In the light of the above, there is no reason whatsoever to impose penalties on the three Appellants namely Shri Hanif Kapadia, Shri Parweej Alam and Shri Dirgesh Dhedia, accordingly penalties imposed on the said appellants are liable to be set aside..

5. In view of the above discussions and findings, we pass the following order:-

1. The penalties imposed upon SHRI HANIF KAPADIA, SHRI PARWEJ ALAM and SHRI DIRGESH DEDHIA under Section 112, 114A and 14AA of the Customs Act, 1962 are set aside, consequently their appeals bearing Nos. C/10642-10644/2024, C/10648-650/2024, C/10653/2024 and C/10654 are allowed.
2. In respect of the appeals, other than the appeals mentioned at Sl.1 above, the matter is remanded to the Adjudicating Authority for passing a fresh denovo order complying the following directions:

(i) The Chartered Engineer's certificate and value of the subject imported goods worked out on the basis of said certificate are hereby rejected.

(ii) The value of subject imported goods shall be assessed on the basis of contemporaneous import/NIDB data after providing the details/ documents to the appellants. Only in cases where contemporaneous value based on NIDB is not available, the value shall be determined as per Valuation Rules sequentially and by deductive method on the price and the details/ documents of such price shall be first provided to the appellant.

(iii) The issue of penalty and the redemption fine in the matter being remanded is kept open.

(iv) Since the goods involved live consignments and the appellant have to suffer heavy demurrage and detention charges, in the interest of justice, the Adjudicating Authority shall pass the denovo order within a period of 4 weeks from the date of this order.

The appeals are disposed of in above terms..

(Pronounced in the open court on 05.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)