

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

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 10055 of 2024-SM

[Arising out of OIO-KND-CUSTM-000-COM-14-2022-23 dated 09/03/2023 passed by
Commissioner of Customs -Kandla]

RVS Petrochemicals Limited

Opp. H.P.C. Blotting Plant, Asaudah,
The. Bahadurgarh,
Jhajjar Haryana-12405

.....Appellant

VERSUS

Commissioner of CUSTOMS - Kandla Customs

office of the Commissioner of Customs,
Near Balaji Temple,
Kandla, Kachchh,
Gujarat- 370210

.....Respondent

With

- (i) Customs Appeal No.10056 Of 2024 (VISHVESHWAR OIL AND LUBRICANTS PVT LTD)**
- (ii) Customs Appeal No. 10141 of 2024 (RELIABLE INDUSTRIES)**
- (iii) Customs Appeal No.10142 of 2024 (SHREE NATH INDUSTRIES LTD)**
- (iv) Customs Appeal No.10143 of 2024 (BSM PETROCHEM P LTD)**
- (v) Customs Appeal No.10144 of 2024 (Jagdamba Petroleum Pvt Ltd)**
- (vi) Customs Appeal No.10145 of 2024 (Shivam Petrochemicals Pvt Ltd.)**

APPEARANCE:

Shri Rajesh Chhibber, Advocate appeared for the Appellant

Shri Himanshu P Shrimali, Superintendent(AR) appeared for the Respondent

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

Final Order No. 13182-13188/2024

DATE OF HEARING/DECISION:12.12.2024

RAMESH NAIR

The appellant purchased goods on high sea sale from M/s. BGH Exim Ltd. (BGH in short). BGH issued invoice for sale of goods and also raised debit notes for certain expenses. The appellant filed bill of entry for the value of invoice raised by BGH and the goods were cleared on payment of duty.

1.1 Later the department made out a case against BGH that they had undervalued the goods by bifurcating the value of imported goods. Simultaneously, the appellant was made party to the case as the goods were

cleared on the bill of entry filed by appellant. Differential custom duty was demanded jointly and severally from BGH and appellant. Penalty was proposed against appellant under Section 114A and 112 of Customs Act.

1.2 BGH approached settlement commission by accepting the ultimate duty payable on the goods. Their case was settled vide order dated 27.03.2015 for payment of entire differential duty of Rs. 1,05,23,322.00, interest and penalty of Rs 4,00,000.00.

1.3 Vide impugned order, penalty upon appellant has been imposed under Section 114A and the lower authority has dropped penalty under Section 112. Therefore, the present appellants filed these appeals seeking setting aside the penalty imposed under Section 114 A of Customs Act.

2. Shri Rajesh Chhibber, Learned Advocate appearing on behalf of the appellants submits that admittedly the custom duty demanded in the impugned order has been paid by the M/s. BGH Exim Ltd and the case of M/s. BGH Exim Ltd has been settled by the settlement Commissioner. As per the impugned order, no demand is payable by the present appellants. Firstly, demand cannot be raised jointly and severally as held in catena of judgments. Therefore, consequential penalty under Section 114 A cannot be imposed. Secondly, even as per the determination of duty in the impugned order, the duty is not payable by the present appellants, for this reason also penalty under Section 114 A was wrongly imposed. He placed reliance on the following judgments:-

- Krishna Kumar Gupta v. Commissioner 2016 (338) ELT432 (Tri.Ahmd)
- Commissioner v. Tejas Arvindbhai Desai - 2016 (338) E.LT. A140 (Guj)

3. Shri Himanshu P Shrimali, Learned Superintendent(AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of the record, I find that in the present case, the appellant is seeking

waiver of Penalty imposed under Section 114 A of the Customs Act, 1962 which reads as under:-

"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 ¹[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :

Provided that where such duty or interest, as the case may be, as determined under ¹[sub-section (8) of section 28], and the interest payable thereon under section ²[28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined :

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account :

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section ²[28AA], and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under ¹[sub-section (8) of section 28] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

From plain reading of the above Section, it is clear that penalty under Section 114 A can be imposed only when the duty is payable. As per the facts of the present case, firstly, as per the impugned order the duty is payable by M/s.

BGH Exim Ltd which has already been paid and the case has been settled under settlement Commission. Secondly, the demand in the show cause notice was proposed jointly and severally on M/s. BGH Exim Ltd as well as the present appellants. As per the settled legal position, duty cannot be demanded jointly and severally and in the facts of the present case the duty was confirmed only against M/s. BGH Exim Ltd. Therefore, there is absolutely no reason to impose penalty under Section 114A.

5. Accordingly, I set aside the penalties imposed on the present appellants and allow the appeals with consequential relief.

(Operative portion dictated in open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)