

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH-COURT NO. 2

CUSTOMS APPEAL NO. 12304 OF 2019 – SMB

(Arising out of OIA-MUN-CUSTM-000-COM-08-19-20 dated 19/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

MAHENDRA N THACKER

.....Appellant

Custom House Agent, Baroiwala Gate, Bunder Road
MUNDRA, GUJARAT

VERSUS

COMMISSIONER OF C.-MUNDRA

.....Respondent

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

WITH

CUSTOMS APPEAL NO. 12587 OF 2019 – SMB

(Arising out of OIO-MUN-CUSTM-000-COM-08-19-20 dated 19/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

RAJIV SAHNI

.....Appellant

7/4, Sunanda, Patel Colony
Jamnagar, Gujarat

VERSUS

COMMISSIONER OF C.-MUNDRA

.....Respondent

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:

Shri Vikas Mehta, Consultant appeared for the Appellant

Shri Sanjay Kumar, Superintendent (AR) appeared for the Respondent

CORAM:

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

FINAL ORDER NO. 10280-10281/2025

Date of Hearing: 24.02.2025

Date of Decision: 28.04.2025

DR. AJAYA KRISHNA VISHVESHA

1. This appeal is directed against order dated 19.07.2019 passed by the Principal Commissioner, Mundra through which he imposed penalty of Rs.50,000/- and Rs.2,00,000/- on the appellants Mahendra N. Thacker, Customs Broker and Rajiv Sahni.

2. The facts of the case in brief are that acting on specific intelligence, the officer of the Directorate of Revenue Intelligence, Ahmedabad carried out search operations at various premises of M/s. Essar Oil Ltd. During the course of search, it was found that M/s. Agarwal (JV), a Joint venture of two companies is engaged in civil construction. M/s. Agarwal (JV) were awarded with a work contract from Government of Gujarat which was aided by World Bank. M/s. Agarwal (JV) by virtue of the said contract were entitled to the exemption from Customs duty under Notification No.84/97-Cus. dated 11.11.1997 in respect of the materials to be used in the said project on the basis of Project Authority Certificate (PAC) issued by the competent authority of Gujarat Government. M/s. Dineshchandra R. Agarwal, Deesa (M/s. Agarwal (JV)) purchased 460 KL of HSD valued at Rs.89,13,340/- from M/s. Essar Oil Ltd which was imported by M/s. Essar Oil Ltd, following the "In Bond transfer" facility, and filed three 'ex-bond Bills of Entry' dated 24.12.2004, 09.02.2005 and 16.03.2005 respectively, claiming the exemption in terms of Notification No.84/97-Cus. dated 11.11.1997 on the strength of PAC issued to M/s. Agarwal (JV). M/s. Dineshchandra R. Agarwal, Deesa was not entitled to use the PAC issued to M/s. Agarwal (JV). Out of the total quantity of 460 KL, the applicant diverted 132 KL of HSD to projects other than the specified project and for the remaining quantity of HSD there have been discrepancies in the destination in the invoices raised by M/s. Essar Oil Ltd for which the PAC was issued and thereby violating the conditions of the Notification No.84/97-Cus. dated 11.11.1997. They were found liable to pay the Customs duty to the extent of the exemption availed i.e. Rs.23,08,356/-.

2.1 In these circumstances, a show cause notice dated 27.02.2006 was issued to M/s. Dineshchandra R. Agarwal, Deesa and others. M/s. Dineshchandra R. Agarwal, M/s. Agarwal (JV), Shri Jagdishchandra Agarwal, M/s. Essar Oil Ltd and Shri S. Thangpandian filed applications dated

23.06.2006 & 28.07.2006 before the Settlement Commission for settlement of the case. Accordingly, the case was settled by the Settlement Commission vide order dated 26.09.2006. However, appellants in the present cases did not apply for settlement of their goods and adjudication proceedings against them was started. The Commissioner of Customs, Kandla vide OIO No. KDL/COMMR./35/2012-13 dated 06.11.2012 dropped the penal proceedings initiated vide show cause notice as matter of main noticee were already settled by the Settlement Commissioner. Against the said order department filed an appeal before CESTAT, Ahmedabad who remanded the matter to the Adjudicating Authority to decide the matter on merit. In the fresh proceedings, the Adjudicating Authority imposed penalty of Rs.50,000/- on Shri Mahendra N. Thacker and Rs.2,00,000/- on Shri Rajiv Sahni. Against the above mentioned impugned order appellants filed these appeals.

Shri Mahendra N. Thacker:-

3. The learned Counsel for the appellant Mahendra N. Thacker argued that the Adjudicating Authority has erred in appreciating the provisions of Section 117 of the Customs Act, 1962. He has also argued that for the violation of Customs House Agents Licensing Regulations, 2004 no penalty can be imposed under Section 117 of the Customs Act, 1962. No proceedings were initiated against the appellant Mahendra N. Thacker for alleged infractions of Customs House Agents Licensing Regulations, 2004. Therefore, penalty imposed upon the appellant Mahendra N. Thacker under Section 117 of the Customs Act, 1962 is liable to be quashed.

3.1 The learned Counsel for the appellant also argued that there is no allegation against the appellant Mahendra N. Thacker regarding collusion between him and the importer or between him and the Customs officers for clearance without making proper declarations and without tendering all the required documents at the time of filing Bills of Entry. The requirement of

taking an affidavit or indemnity bond or declaration on behalf of M/s. Essar Oil Ltd for storing HSD at site based on which infraction of Section 46 is alleged was neither advanced at the time when appellant filed into-bond Bill of Entry on behalf of M/s. Essar Oil Ltd and ex-bond Bills of Entry on behalf of importer nor clearance was held up on this account. All documents required for permitting clearance were duly furnished at the relevant time. There is no such allegation against the appellant that clearance was wrongly permitted without appropriate documents. Therefore, there is no justification for imposing penalty on the appellant Mahendra N. Thacker under Section 117 of the Customs Act, 1962.

3.2 The learned Counsel for the appellant also cited the decision in **Glory Agencies vs. Commr. Of Cus. (Seaport-Exports), Chennai**, 2009 (244) E.L.T. 596 (Tri-Chennai) in which it was held that responsibility of CHA would cease once goods are handed over to the transporters and CHA cannot be expected to have knowledge as to what happened to the goods after handing them over to the transporters as clearance was permitted on production of a valid PAC. The learned Counsel for the appellant argued that the Adjudicating Authority failed to appreciate that the appellant would have no control over the goods after it leaves the customs area. Therefore, the conclusion arrived at by the learned Adjudicating Authority that the appellant failed to ensure the leakage of government revenue is not sustainable and error has been committed in imposing penalty on the appellant on this ground.

3.3 The learned Counsel for the appellant also submitted that the Adjudicating Authority failed to give due consideration to the settled law that CHA/ Custom Broker is not liable to penalty under Section 117 of the Customs Act, 1962 where errors are typographical in nature and there is no evidence of abetment. In this case, there is no allegation of abetment against the appellant. Hence, typographical error by appellant's employee in

mentioning the name and IEC of M/s. Dineshchandra R. Agarwal in place of M/s. Agrawal (JV) C/O M/s. Dineshchandra R. Agarwal ought to have been condoned when there is no dispute regarding the fact that clearance was permitted on the basis of PAC in favour of M/s. Agrawal (JV) that was produced along with Bill of Entry. Therefore, the Adjudicating Authority was not justified in imposing penalty upon the appellant under Section 117 of the Customs Act, 1962. It has been prayed that the appeal may be allowed and the impugned order passed by the Adjudicating Authority may be set aside.

4. The learned Authorised Representative argued that Shri Jagdishchandra R. Agarwal, Director of M/s. Agrawal (JV) in his statement dated 04.05.2005 has stated that M/s. Mahendra N. Thacker, CHA filed three different ex-bond Bills of Entry (clearance of 460 KL of HSD covered by three ex-bond Bills) Nos. F-1005 dated 24.12.2004 for 140KL, F-1208 dated 09.02.2005 for 200 KL and F-1430 dated 16.03.2005 for 120 KL in the name of M/s. Dineshchandra R. Agrawal with IEC No. 0888021119, who were not entitled to avail the benefit of the exemption as PAC was issued in the name of M/s. Agrawal (JV). The appellant Mahendra N. Thacker has mentioned in his defence that there was typographical error on the part of his employee Shri Hiten Thacker in entering the name of importer as M/s. Dineshchandra R. Agrawal in place of M/s. Agrawal (JV) C/o M/s. Dineshchandra R. Agrawal and occurrence of similar error in entering IEC code, which is not acceptable. It is the duty of the Customs House Agent/ Customs Broker to abide by the Customs House Agents Licensing Regulations (CBLR). Shri Mahendra N. Thacker, CHA/ Customs Broker failed to ensure the leakage of Government revenue by not acting in a manner as specified in the CHA licence. He prepared ex-bond Bill of Entry for the clearance of HSD in respect of B & R and has appended his signature for CHA in the name of M/s. Mahendra N. Thacker. The appellant Mahendra N. Thacker failed to furnish the requisite details in the Customs clearance documents and failed to take an affidavit or

indemnity bond or declaration on behalf of M/s. Essar Oil Ltd for storing HSD at site and thereby, violated the provision of Section 46 of the Customs Act, 1962 and the Regulation 13 (a), (d), (l) & (o) of the Customs House Agents Licensing Regulations, 2004, wherein, he failed to obtain authorisation on behalf of M/s. Essar Oil Ltd and buyer for filing Customs clearance documents with Customs. He also failed to verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information and hence, participated in the diversion of HSD procured under PAC. The learned Authorised Representative prayed that the appeal may be dismissed.

5. I have heard the learned Counsel for the appellant and learned Authorised Representative for the department and perused the record.

5.1 Section 46 of the Customs Act, 1962 provides as follows:-

"46. Entry of goods on importation.

(1)The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing [in such form and manner as may be prescribed] [Substituted 'in the prescribed form' by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]:Provided 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.

(2)Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3)[The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at

a customs station at which such goods are to be cleared for home consumption or warehousing: Provided that a bill of entry may be presented [at any time not exceeding thirty days prior to] [Substituted by Finance Act, 2017 (Act No. 7 of 2017), dated 31.3.2017.] of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India: Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.]

(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [and such other documents relating to the imported goods as may be prescribed] [Substituted 'relating to the imported goods' by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.].

(4A) [The importer who presents a bill of entry shall ensure the following, namely: -

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa."

5.2 Provision of Section 117 of the Customs Act, 1962 provides as follows:-

"117. Penalties for contravention, etc., not expressly mentioned.

- Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided

for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees]"

5.3 Provisions of Regulation 13 (a), (d), (l) & (o) of the Customs House Agents Licensing Regulations, 2004 are as follows:-

"13. Obligations of Customs House Agent.-

(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as Customs House Agent and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(l) ensure that all documents, such as bills of entry and shipping bills delivered in the Customs Station by him show the name of the importer or exporter, as the case may be, and the name of the Customs House Agent, prominently at the top of such documents;

(o) verify antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."

5.4 Provision of Regulation 20 of Custom House Agents Licensing Regulations, 2004 is as follows:-

"20. Suspension or revocation of licence.-

(1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely :-

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or any where else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

(2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, within fifteen days from the date of receipt of a report from investigating authority, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated.

(3) Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs may, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs House Agent whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs House Agent."

5.5 After going through the provision of Section 46 of the Customs Act, it is clear that under Section 46 of the Customs Act, duty has been imposed upon the importer of the goods and not upon the Custom Broker or Customs House Agent, therefore, no penalty can be imposed upon the appellant Mahendra N. Thacker who worked as Custom Broker for the violation of Section 46 by the importer.

5.6 From the perusal of the provision of Section 117, it is clear that where there is no express penalty elsewhere in the Act then penalty may be imposed under Section 117 for contravention of any provisions of this Act. In the impugned order, the Adjudicating Authority has not made it clear that the appellant Mahendra N. Thacker violated which provisions of Customs Act which he was duty bound to follow. Therefore, penalty cannot be imposed upon the appellant arbitrarily without clearly defining the violation of any specific provision of the Customs Act.

5.7 As far as the violation of Customs House Agents Licensing Regulations, 2004 is concerned, no penalty can be imposed upon the Customs Broker or

CHA and only his licence may be suspended or may be cancelled under Regulation 20.

5.8 I also found sufficient force in the arguments of the learned Counsel for the appellant Mahendra N. Thacker that impugned order is silent regarding requisite details which the appellant Mahendra N Thacker failed to furnish before the Customs Authority. It is also pertinent to note that clearance was permitted by the Customs officers. After all the requisite details were duly presented at the time of assessment and the clearance. It is also pertinent to note that there is no requirement of affidavit or indemnity bond or declaration to be obtained by the Customs Broker in the aforesaid Notification.

5.9 As far as the observation of learned Adjudicating Authority that the appellant Mahendra N. Thacker observed wilful negligence in doing his duty is concerned, it also lacks force because in **Glory Agency vs. Commr. Of Cus. (Seaport Exports), Chennai**, 2009 (244) ELT 596 (Tri-Chennai), the Tribunal has clearly held that responsibility of CHA would cease once goods are handed over to the transporters and CHA cannot be expected to have knowledge as to what happened to the goods after handing over to the transporters.

5.10 I am also of the view that there is no evidence on the record to show that appellant made any undue gains on account of clearance of goods imported by M/s. Essar Oil Limited from any quarter.

6. In view of the above discussion, it is clear that the learned Adjudicating Authority has imposed penalty upon the appellant M/s. Mahendra N Thacker arbitrarily without proper justification and the order imposing penalty upon the appellant Mahendra N Thacker is liable to be set aside.

Shri Rajiv Sahni:-

7. The learned counsel for the appellant Shri Rajiv Sahni argued that Rajiv Sahni was working merely as Business Development Associate of M/s. Essar Oil Limited. The role of appellant was limited to arrange sale of goods imported by M/s. Essar Oil Limited to various buyers. The appellant had no control over the use of such goods at the end of buyer. In this case, the buyer admittedly used the goods i.e. High Speed Diesel oil at the site that was not covered by PAC. However, the appellant is not responsible for disposal of goods by the buyers. The learned counsel for the appellant further argued that the appellant is neither importer nor seller nor buyer and not even Customs Broker. He was merely an agent who facilitated sale of goods from M/s. Essar Oil Limited to M/s. Agrawal (J.V.). As the appellant Rajiv Sahni had not filed any bill of entry, the appellant cannot be said to have rendered the goods liable to confiscation under Section 111. Hence, imposition of penalty on appellant under Section 112 (a) of Customs Act, 1962 is not tenable in the eye of law. He has prayed that the appeal be allowed and the order of the Adjudicating Authority regarding imposition of penalty on the appellant Shri Rajiv Sahni be set aside.

8. The learned authorized representative for the department argued that Rajiv Sahni looked after the promotion of the sale of HSD for M/s. Essar Oil Limited. He was aware that projects aided by World Bank are eligible to obtain customs duty free HSD for use in the project. He helped the consumers to register themselves with M/s. Essar Oil Limited to procure imported Customs duty exempted HSD and completed the necessary formalities such as Bond-to-Bond transfer of goods, filing of ex.bond bill of entry through CHA Shri Mahendra N. Thacker at Mundra port. The delivery of HSD was effected through Shri Dharmendrasinh Zala, an employee of Shri Rajiv Sahni stationed at Mundra Terminal, who arranged transportation of the goods to the destined site and also signed the M/s. Essar Oil Limited

invoice on behalf of the supplier and in the L.R. of the tankers used in the transportation of HSD under the instructions of Shri Rajiv Sahni. Shri Rajiv Sahni as a Business Development Associate was to ensure that the buyers of HSD had the adequate storage facilities as well as license under the Explosives Act, 1884. As he was marketing HSD for M/s. Essar Oil Ltd, Shri Rajiv was well aware of the custom clearance as admitted in his statement dated 30.03.2005 and also about the provisions of Notification No. 84/97-Customs dated 11.11.1997 and conditions attached thereunder. In spite of having this knowledge, he directed his employee Shri Dharmendrasinh Zala to arrange for transporting the duty free HSD, which was diverted at other project sites on his instructions which were not funded by the World Bank and thereby violated the provisions of the prohibition imposed on such products in terms of Section 11 of the Customs Act, 1962. He insisted that the drivers of the tankers transporting the HSD should be equipped with mobile phones as was confirmed by the owner of M/s. Siddhi Handling Agency in his statement dated 30.03.2005, so that Rajiv Sahni could instruct the drivers and cleaners of the tankers directly regarding the destination of unloading the HSD. The transporters involved in this case stated in their statement that they were delivering the HSD on the instructions of Shri Rajiv Sahni. The statement of Shri Dharmendrasinh Zala dated 01.04.2005 reveals that he was working on the telephonic instructions of Shri Rajiv Sahni. Shri Rajiv Sahni has also categorically admitted in his statement dated 01.04.2005 that he was aware that M/s. Agrawal (J.V.) was diverting the HSD cleared under PAC to other site like Jetada. Statement dated 04.05.2005 and 26.12.2005 of Shri Jagdishchandra Agrawal, the director of M/s. Agrawal (J.V.) clearly brings out the role of Rajiv Sahni as a middleman for sale of imported Customs duty exempted HSD which he had every reason to believe, was being diverted to place other than the World Bank funded project Vadodara – Padra – Janbusar mentioned in the PAC. Shri Rajiv Sahni thus played a key role in the diversion of imported HSD cleared under PAC,

in collusion with the importer and the PAC holder M/s. Agrawal (J.V.) and thus aided and abetted the diversion of 460 KL HSD valued at Rs.89,13,340/- and having a duty liability of Rs. 23,08,357/-.

9. I have heard the learned counsel for Shri Rajiv Sahni and the learned Authorized Representative for the department and perused the record.

10. In my view, there is sufficient evidence on the record which prove beyond doubt that Shri Rajiv Sahni, Business Development Associate (BDA) was on the lookout for potential bulk buyers of the HSD imported by M/s. Essar Oil Limited. He was well aware that projects funded by World Bank are eligible to obtain Customs Duty free HSD for use in the project. Contractors doing the project work aided by the World Bank approached him for help and procurement of duty free HSD as they were in possession of Project Authority Certificate. Shri Rajiv Sahni helped them to register themselves with M/s. Essar Oil Limited to procure imported Customs Duty free HSD and to complete all the necessary formalities. However, subsequent delivery of HSD was effected through Shri Dharmendrasinh Zala, an employee of Shri Rajiv Sahni who was stationed at Mundra Terminal and who was arranging transportation of goods to the destined site. He also signed the Essar Oil Limited invoice on behalf of the supplier and in the N.R.S. of the tankers used in the transportation of HSD under instructions of Shri Rajiv Sahni. Shri Rajiv Sahni was well aware of the Customs clearance process and got regular updates from M/s. Essar Oil Limited, Mumbai, which he admitted in his statement. He was well aware of the provisions of Notification No. 84/1997 dated 11.11.1997 and conditions attached with the duty exemption thereunder. Despite having such knowledge, he directed his employee Shri Dharmendrasinh Zala to arrange for transporting the duty free HSD which has been ultimately diverted at other project sites on his instructions which were not funded by the World Bank and thereby violated the prohibition imposed on such products in terms of Section 11 of the Customs Act, 1962.

He insisted that the drivers of the tankers transporting the HSD should be equipped with mobile phones as was confirmed by the owner of M/s. Siddhi Handling Agency in his statement dated 13.05.2005 so that Shri Rajiv Sahni could instruct the drivers and cleaners of the tankers directly regarding the destination of unloading the HSD. The transporters M/s. Shree Krishna Transport Company, M/s. C.R. Transport Co. and M/s. Shivom Bulk Carriers have also stated in their statements dated 13th August, 2005 that they were delivering the HSD on the instructions of Shri Rajiv Sahni. The statement of Shri Dharmendrasinh Zala dated 1st April, 2005 also revealed that he was working on the telephonic instructions of Shri Rajiv Sahni. Shri Rajiv Sahni has also categorically admitted in his statement dated 1st April, 2005 that he was aware that M/s. Agrawal (J.V.) was diverting the HSD cleared under PAC to other site like Jetada. Statements dated 4th May, 2005 and 26th December, 2005 of Shri Jagdishchandra Agrawal, the Director of M/s. Agrawal (J.V.) clearly brings out the role of Rajiv Sahni as a middle man for sale of imported Customs Duty exempted HSD which he had every reason to believe was being diverted to place other than World Bank funded project Vadodara-Padra-Jambusar, mentioned in the PAC. Therefore, from the material available on the record, it is clear that Shri Rajiv Sahni played a key role in the diversion of the imported HSD cleared under PAC in collusion with the importer and the PAC holder M/s. Agrawal (J.V.) and thus aided and abetted in the diversion for 460 KL HSD valued at Rs. 89,13,340/- and having a duty liability of Rs. 23,08,357/-. Therefore, the order of the Principal Commissioner imposing penalty of Rs. 2,00,000/- on Shri Rajiv Sahni Business Development Associate of M/s. Essar Oil Limited is sustainable and is liable to be confirmed.

11. In view of the above discussion, I am of the view that Customs Appeal No. 12304 of 2019 is liable to be allowed and the order of the Principal Commissioner imposing penalty of Rs. 50,000/- on M/s. Mahendra N.

Thacker CHA under Section 117 of the Customs Act, 1962 is liable to be set aside whereas the Customs Appeal No. 12587 /2019 against Shri Rajiv Sahni is liable to be dismissed.

12. Consequently, Customs Appeal No. 12587/2019 is dismissed whereas Customs Appeal No. 12304 of 2019 is allowed and the order of Principal Commissioner dated 19th July, 2019 regarding imposing of penalty of Rs. 50,000/- on M/s. Mahendra N. Thacker CHA is set aside.

(Order pronounced in the open court on 28.04.2025)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)