CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 13011 OF 2019

[Arising out of OIA-KDL-CUSTM-000-APP-79-80-19-20 dated 13/12/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

JINDAL FIBRES **Appellant**
PLOT NO. 49 & 58, Sector-II,
Kandla Special Economic Zone, Gandhidham,
Kutch, Gujarat

Vs.

COMMISSIONER OF CUSTOMS-KANDLA **Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

WITH

CUSTOMS APPEAL NO. 13012 OF 2019

[Arising out of OIA-KDL-CUSTM-000-APP-79-80-19-20 dated 13/12/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

SHRI VIKAS MITTAL **Appellant**
Authorised Signatory of M/s. Jindal Fibres
PLOT NO. 49 & 58, Sector-II,
Kandla Special Economic Zone, Gandhidham,
Kutch, Gujarat

Vs.

COMMISSIONER OF CUSTOMS-KANDLA **Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

Appearance:
Shri Parth Rachchh, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 10540-10541/2025

Date of Hearing : 04.03.2025
Date of Decision :03.07.2025

DR. AJAYA KRISHNA VISHVESHA :

These appeals are directed against the Order-in-Appeal dated 13th December, 2019 passed by the learned Commissioner Customs (Appeals)

Ahmedabad through which the learned Commissioner rejected the appeals filed by Appellants No. 1 M/s. Jindal Fibres Pvt. Limited and Appellant No. 2. Shri Vikas Mittal, authorised signatory of the M/s. Jindal Fibres Pvt. Limited.

2. The brief facts of the case are that the appellant no. 1 is a unit under KASEZ and the appellant no.2 is its authorized signatory. They cleared the consignment of old and used clothes in DTA area under Bill of entry no. 378 dated 18th January, 2013. During transit the said consignment was intercepted and offloaded under proper Panchnama. It was observed that the goods Cotton Sweaters (knitted) were only with certain incisions. It was found that the description of the said clothes were not in conformity with the condition as prescribed in terms of Circular no. 36/2000-Customs dated 08.05.2000 read with instruction no. 1/2011-12 dated 14th July, 2011 issued by the Deputy Commissioner of Customs, KASEZ to the extent that the old and used clothes are required to be cleared for home consumption only after complete mutilation rendering the same unserviceable and beyond repair.

3. In view of above mentioned violations Show Cause Notice dated 18th July, 2013 was issued to the appellant no. 1. It was asked to show cause why:-

(a) "Cotton Sweaters (Knitted)" weighing 52750 kgs cleared by them under Bill of Entry no. 378 dated 18.01.2013 seized under Panchnama dated 12.02.2013 and presently lying at Shed no. 405, N-II, New Area KASEZ should not be classified under CTH 6309 0000 and should not be confiscated under the provisions of Section 111(d) & (m) of the Customs Act, 1962;

(b) Customs duty amounting to Rs. 2,06,837/- as per duty calculation sheet at Annexure-I should not be demanded and recovered from them under Section 28(4) of Customs Act, 1962 read with provisions of Section 30 of the SEZ Act, 2005 and Rules 25 & 34 of the SEZ Rules, 2006;

(c) Interest should not be recovered from them on the said customs duty as at (ii) above, under Section 28AA of the Customs Act, 1962;

(d) Penalty should not be imposed on them under Section 112(a) and 114A of the Customs Act, 1962;

(e) The vehicles bearing registration no. HR-66-3734 and HR-66B-2393 valued at Rs. 3.50 lakhs each) Total Rs. 7.00 Lakhs) utilized for transportation of the said goods, seized under Panchnama dated 14. 02.2013, should not be confiscated under Section 115 of the Customs Act, 1962.

3.1 Shri Vikas Mittal, Authorized Signatory of the appellant M/s. Jindal Fibres, was issued Show Cause Notice asking him as to why penalty should not be imposed on him under Section 112(a) and 114AA of the Customs Act, 1962;

3.2 Above mentioned Show Cause Notice was adjudicated by the then Additional Commissioner of Customs, Custom House, Kandla vide Order in original bearing No. KDL/ADC/UBR/72/2016-17 dated 1 30.3.2017 confirming the demand of differential duty and imposing fine/penalty on both unit and the authorized signatory.

3.3 Aggrieved with the above Order-in-Original, the appellant filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. In the said appeal they have relied upon the judgement of CESTAT issued in the case of **M/s Tulip Exim Pvt Limited** dated 04.10.2017. The Commissioner (Appeals), Ahmedabad vide Order-in-Appeal No. KDL-CUSTOM-000-APP-02 to 04-18-19 dated 11.04.2018 remitted the matter directing the lower authority, to examine whether all facts and circumstances of the relied upon case are identical or otherwise and also examine the applicability of relied upon case laws and pass order afresh in this case following the principles of natural justice and legal provisions.

3.4 The Adjudicating Authority in compliance of order of Commissioner (Appeals) re-examined the matter and observed that the case of **M/s Tulip**

Exim Pvt Ltd is not squarely applicable to present case, though the case is of similar nature. The adjudicating authority vide impugned order declared that the goods are not "Old and used Mutilated Rags (Cotton/Woolen & Synt.)"in conformity to the mutilation norms prescribed in the Circular No.36/2000-Cus dated 08.05.2000 issued as required in the Foreign Trade Policy for import of the goods under 63109010 and are appropriately classifiable under CTH 63090000. He ordered for confiscation of the said goods valued at Rs.8,74,595/- under Section 111(d)&(m) of the Customs Act, 1962. However, he gave an option to the appellant to redeem the goods on the payment of fine of Rs.4,00,000/- under Section 125(1) of the Customs Act, 1962. He confirmed the demand of differential duty of Rs.2,06,837/-under Section 28(4) of the Customs Act, 1962 read with provisions of Section 30 of the SEZ Act,2005 and Rules 25&34 of the SEZ Rules, 2006 made there under. He also ordered for recovery of interest on the differential Customs duty amount from them under Section 28AA of the Customs Act, 1962 and imposed penalty of Rs.2,06,837/- on the appellant Jindal Fibres under Sections 114A of the Customs act, 1962. He also imposed penalty of Rs.20,000/- under section 112(a) of the Customs Act, 1962 and Rs.1,00,000/- under section 114(AA) of the Customs act, 1962 on the appellant Shri Vikas Mittal and ordered for confiscation of the vehicles valued at Rs.3,50,000/- each (Total Rs.7,00,000/- only) which were utilized for transportation of the said seized goods. However, he gave an option to the Appellant no.1 to redeem the same on payment of fine of Rs.1,00,000/- under Section 125(1) of the Customs Act, 1962.

3.5 Feeling aggrieved from the Order-in-Original as mentioned above, the appellant preferred appeal before Commissioner (Appeals). The learned Commissioner found no merit in the appeal and rejected both the appeals. Feeling aggrieved from the impugned order dated 13th December, 2019 the present appeals have been filed by the appellants.

4. The learned counsel for the appellant argued that the impugned order passed by the Commissioner (Appeals) is without jurisdiction because it is against the decision of the Tribunal which is holding the field. The Hon'ble Supreme Court in the case of **M/s. Kamalakshi Finance Corporation** reported in 1991 (55) ELT 433 has held that the principle of judicial discipline demand that the decision of the Tribunal is binding on all Adjudicating and Appellate Authorities within its jurisdiction and the decision of the Tribunal which is higher authority cannot be discarded by the Commissioner (Appeals). The Commissioner (Appeals) has no jurisdiction to give contrary findings when the CESTAT had already decided similar matters on the same subject matter and the appeals were allowed.

5. The learned Counsel for the appellant also argued that the Hon'ble Gujarat High Court has held in the case of M/s. **Cleris Life Sciences Limited** reported in 2014 (304) ELT 282 that lower Authorities cannot ignore the decision passed by the appellate authority. Even the Adjudicating Authority when acting as quasi-judicial authority is bound by the law of precedent and the binding effect of the order passed by the higher authority or tribunal of superior jurisdiction.

6. The learned counsel for the appellant also argued that the Commissioner (Appeals) has relied upon the circular issued by the CBEC Circular F. No. 390/MISC/163/2010 dated 20th October, 2010 and observed that the board has clarified that when the appeals are not filed because of litigation policy then such cases shall not have precedent value. This approach is erroneous and not sustainable in the eye of law.

7. The learned counsel for the appellant also argued that the Commissioner (Appeals) has committed grave error in passing the impugned order which is against the decision dated 4th October, 2017 pronounced by the Hon'ble CESTAT Ahmedabad in case of **M/s. Tulip Exim**

Pvt Limited, despite holding that the present case is of similar nature. The Additional Commissioner being bound by the decisions rendered by the Hon'ble Tribunal could not have taken a contrary view.

8. The learned counsel for the appellant also argued that the Commissioner (Appeals) has committed error in confirming the demand of duty against the appellant despite the fact that the importer of the material in question was the Domestic Tariff Area unit and not the appellant. In the present case, the appellant has cleared the consignment to M/s. Jindal Woolen Industries and in terms of Rule 47 read with Rule 48 of the SEZ Rules, SEZ unit was permitted to file a Bill of entry for and on behalf of the DTA buyer. In the present case, the appellant has filed the Bill of entry for and on behalf of the DTA unit whose name was also clearly reflected on the copy of the Bill of entry. Therefore, it is evident that M/s. Jindal Woolen Industries was the importer who was responsible for the liabilities arising out of the goods in question and the filing of Bill of entry for and on behalf of the importer would not shift such liability on the appellants. Section 28 of the Customs Act provides for recovery of short levy or short paid duty from the person chargeable with duty. The term 'importer' has been defined in Section 2 (26) of the Customs Act to include or any person holding himself out to be the importer. In the present case M/s. Jindal Woolen Industries have undoubtedly held themselves out to be the owner as well as the importer of the goods in question and hence demand of duty and interest thereon could have been made and confirmed only against them. The adjudicating authority has, however, brushed aside this legal position on the ground that the combined reading of definition of 'import' and 'export' as defined under section 2 (m) & 2 (o) of the SEZ Act, 2005, supplying goods to a DTA is not an export and equally, purchasing goods from SEZ unit by a DTA unit is not covered under definition of 'import'. The adjudicating authority has further held that ownership of the goods was not

changed till the time of seizure which was evident from the fact that the Bill of entry was filed by the appellant on behalf of the DTA unit. Moreover, the authorities below have also observed as regards the decision of CESTAT in the case of **Tulip Exim Pvt Limited** that nothing was argued on the point of importation of goods and definition of 'imports' and 'export' under SEZ Act, 2005. However, both the aforesaid findings are illegal and unsustainable and on their basis, the appellant cannot be held liable for Customs duty. The mere fact that the appellant had filed the Bill of entry did not shift the liability with regard to the goods on them in as much as the said Bill of entry was filed for and on behalf of the DTA buyer.

9. The learned counsel for the appellant also argued that in case of **M/s. Tulip Exim Pvt Limited** and **M/s. Anita Exports** the Hon'ble CESTAT Ahmedabad has held that the clearances made from SEZ to DTA are considered as import for DTA unit and the DTA unit is required to discharge duty if any arises after the clearance is made by the SEZ unit and the SEZ unit cannot be held to be importers in such cases and the Board Circular only warrants 'deep cuts' to render goods unserviceable and it is not compulsory to cut the rags in a particular fashion. The facts of this case are identically similar to the above mentioned **M/s. Tulip Exim Pvt Ltd** case and therefore, the order passed by Hon'ble Tribunal is directly applicable in this case. Since, there are no contrary decisions on this issue, the decisions of Hon'ble CESTAT Ahmedabad in the case of **M/s. Tulip Exim Pvt Ltd** and **M/s. Anita Exports** may be followed in the interest of justice. Therefore, the clear legal position emerges that the SEZ unit cannot be considered as the importer in the present case and consequently, the duty demand or redemption fine and penalties cannot be imposed against the SEZ unit and the impugned order-in-appeal is against law.

10. The learned counsel for the appellant also argued that it is evident from not only the Panchnama recorded in the present proceedings but also the report dated 4th February, 2013 given by the appraiser. The used and mutilated clothing sold by the appellant to the DTA unit had incisions on both the sleeves 8 to 13 cm far from the shoulder seams. Moreover, another incision about 7 to 10 inches was also on the back side of the sweater and 2 to 4 inches below the neck. Thus, even on visual inspection of such material, it was evident that such used clothing was unserviceable and irreparable. Even the note prepared by the appraiser of KASEZ, has confirmed that such incisions made were in consonance with the circular and the instruction issued in this regard. The appraiser in his report, has suggested that though there is no specific violation of the said circular but in order to ensure that such garments are converted into fibrer only the same may be directed to the cut into pieces while closing the issue. The authorities below have, however, proceeded on the assumption that the material cleared by the appellants were not in conformation of the circular and such violation was confirmed in the reports submitted by the appraiser. The authorities below have held that the goods were having 4 cuts but the same were not in the manner specified in the guideline outlined in the aforesaid circular. Moreover, it was also suggested that the cuts were near to the seams, which does not make the said clothing to be completely mutilated and unserviceable. However, the authorities below have failed to give reasons as to why the guideline suggested in the circular has not been followed by the appellants. It has been the clear stand of the appellant that the cuts made by them to the clothing in question rendered them clearly unserviceable and not reusable. Such manner of cutting the clothing was also accepted by the assessing officer who examined the consignment before its clearance. No evidence was brought on record to show that such large incisions of about 10 to 30 inches were not sufficient and such

material could be serviceable and may be reused by the importer. It will also be pertinent to note that there is specific finding of the appraiser in his report dated 4th February, 2013, wherein he has confirmed the divergent practices prevalent with regard to mutilation of clothes. On mere perusal of the said report, it would be evident that the appraiser had found the present consignment to be in conformation of the requirement of the circular but has noted that circular in itself was weak. Thus, it is evident that incisions made by the appellant to the material in question was sufficient and the mutilation of clothing was also in compliance of the mandate provided under the said circular and the instruction. The impugned order rejecting this plea of the appellant is neither based on any concrete fact nor any evidence. Thus, it is evident that the order passed by the Commissioner (Appeals) is *de-hors* of any merit and liable to be set aside.

11. The learned counsel for the appellant also argued that the appellant has not violated any provisions of law or rules made thereunder. Therefore, the Commissioner (Appeals) has committed error in imposing penalty on the appellant on the ground that the appellant unauthorisedly cleared such goods. When such goods have been mutilated by the appellant according to the requirement of the circular and the instruction and such mutilation has been scrutinized and verified by the assessing officer at the time of the assessment of the Bill of entry, penalty could not have been imposed on the appellant and the order of confiscation of the goods is also without any justification whatsoever. The impugned order about penalty on the appellant and confiscation, therefore, deserves to be set aside. He also argued that before clearance from the zone, the goods were examined by the preventing officer/ appraiser and his report confirmed that the goods were as declared and properly mutilated and the report of preventive officer / appraiser has not been rejected by the department.

12. The learned counsel for the appellant also argued that the appellant has not done nor failed to do anything which would render the imported goods liable for confiscation. Therefore, section 114A of the Customs Act was not attracted in this case. There was no justification for imposing penalty of Rs. 2,06,837/- on the appellant and penalty imposed is illegal. He has also argued that Section 114A of the Customs Act is not attracted because this case is not a case of any collusion or willful misstatement or suppression of facts or any such ill-intention on the appellant's part. Admittedly, the appellant has filed Bills of entry with all the necessary documents for clearance of imported goods for home consumption. The Bill of entry was filed on behalf of the actual importer M/s. Jindal Woolen Industries Ltd. There is no non-compliance of the provisions of Customs Act by the appellant. Even if there was short levy or short payment of Customs duty, penalty under Section 114A of the said Act could be imposed only when it was a case of collusion or willful misstatement or suppression of facts.

13. The learned counsel for the appellant also argued that there is no violation of any law or rules. The appellants have filed Bill of entry for the goods in question with all required documents and they have also furnished all relevant information to the Customs officers to assess duties on DTA goods. On the basis of the facts of this case, penalty on the firm or its authorized signatory is not justified. Therefore, the order imposing penalty on the appellant is bad in law and should be set aside.

14. The learned counsel for the appellant also argued that in the present case, all used and worn clothes have been properly mutilated and whether the mutilation was in conformation with requirements provided under the circular and instruction has been properly examined by the proper officer. Therefore, there is no act or omission on the part of the appellant which

would render the goods liable to confiscation. There is no evidence on record that the mutilation carried out by the appellant was not proper or the appellant knew that the goods in question were not properly mutilated. Therefore, there was no malafide intention on the part of the appellant which would justify imposition of penalty under Section 112A of Customs Act.

15. The learned counsel for the appellant also argued that the penalty imposed on the appellant, the authorised signatory of the appellant Company, under section 112A of the Act, is also illegal and not justified. In this case Shri Vikas Mittal has not dealt with the goods, with knowledge or reason to believe that they were liable for confiscation. Department has not shown as to how Shri Vikas Mittal, the Authorised Signatory of the Company, was indulging in carrying, harbouring, keeping, concealing, selling or purchasing any goods, which he knew or had reason to believe were liable to confiscation. No evidence has been adduced in support of the allegations. It has not been made clear in the notice whether he was engaged in carrying or in removing or in depositing or in keeping or in selling the dutiable goods which he knew or had reason to believe were liable for confiscation. Therefore, the penalty imposed upon the appellant the Authorised Signatory of the appellant Company, is illegal and liable to be set aside.

16. The learned counsel for the appellant also argued that the penalty imposed upon the appellant, under section 114AA of the Act, is unsustainable in the eye of law. Section 114AA of the Customs Act provide for penalty if a person knowingly or intentionally makes, sign or uses any declaration, statement or documents, which is false or incorrect in material particular in the transaction of any business. However, it is not established in this case that Shri Vikas Mittal had knowingly or intentionally made, sign

or used any declaration, statement or document which was false or incorrect in any material particular. Therefore, section 114AA is not attracted in the present case. There has been no mis-declaration and no penalty should have been imposed on the appellant, authorised signatory.

17. The penalty imposed on the appellant, the Authorised Signatory of the appellant company under Section 112A of the act is illegal and unjustified. In case of **ZU Alvi** vs. **CCE Bhopal** reported in 2007 (36) RLT 721, the Tribunal has held that when an employee of a company was dealing with the goods in his official capacity as an employee of the manufacturer and it was not a case where such an employee was covered under Rule 209A of the said rules. When a person was not in charge or responsible for the conduct of business of the manufacture and was dealing with the goods only in his official capacity as an employee, he could not be considered to be a person liable for penalty under Rule 209A of the Rules, which is similar to Section 112 of the Customs Act. Therefore, the order regarding penalty is liable to be set aside.

18. The learned counsel for the appellant also argued that Shri Vikas Mittal is working as Authorised Signatory of the appellant company and has dealt with goods in his official capacity as a manager of the said company. He has not dealt with any goods in his personal capacity for any personal gain. Therefore, provision of Section 112A of the Customs Act is not attracted.

19. The learned counsel for the appellant also argued that in **Vinod Kumar** vs. **Commissioner of Central Excise Delhi** reported in 2006 (199) ELT 705 (Tri. Delhi), the Tribunal has held that personal penalty on an employee was not justified nor called for when the employee was discharging his duties in accordance with the directions of the employer and he had no personal interest in the activities of the employer. In the

present case, there is no evidence to show that Shri Vikas Mittal had acted outside the purview of his duty or he had any personal interest in the business affairs of the company. Therefore, the penalty imposed upon Shri Vikas Mittal is not sustainable and is liable to be set aside.

20. The learned counsel for the appellant prayed that the impugned order-in-appeal is illegal, without jurisdiction, devoid of any merit and is liable to be set aside.

21. The learned Authorised Representative for the department reiterated the impugned order passed by the learned Commissioner and argued that the impugned order has been passed in accordance with the provisions of Customs Act and relevant circular and rules. Therefore, the impugned order is liable to be confirmed and appeal may be rejected.

22. I have heard the learned counsel for the appellant and the learned Authorised Representative for the department and perused the record.

23. The learned Counsel for the appellant mainly raised three issues before this Tribunal which have to be decided by it. The first issue is whether the Commissioner (Appeals) has committed error by holding that Appellant M/s. Jindal Fibres is the main importer and the key player in the import of the goods and he is liable for differential Customs duty, fine, penalty etc. under Customs Act, 1962 and SEZ Act, 2005 read with SEZ Rules, 2006, whereas the Bill of Entry No. 378 was filed in the name of M/s. Jindal Woolen Industries Limited, Haryana for the clearance of worn out clothing from SEZ to DTA. The second issue is whether the mutilation of the goods was not in accordance with the requirement of Circular No. 36/2000-Cus dated 08.05.2000 and consequently, the appellant violated the relevant Circular of Government of India. The third issue is whether

the appellate authority has committed error in imposing penalty on the appellant.

23.1 As far as the first point is concerned, the learned Commissioner (Appeals) has stated in the impugned order dated 13.12.2019 at para 9 that this aspect has been discussed in detail by the adjudicating authority at para 44 and 45 that from the combined reading of definition of "import" and "export" as defined under Section 2(m) and 2(o) of the SEZ Act, 2005, supplying goods to a DTA is not an 'export' and equally purchasing goods from SEZ unit by a DTA unit is not covered under definition of 'import'. Hence, SEZ unit's contention that they are the supplier of goods, so they are exporter and DTA unit, who is buyer of the said goods is the importer in the present case and thus customs duty liability lies on them, is not legally tenable because the appellant M/s. Jindal Fibres never filed any Export Shipping Bill for exportation of the impugned goods and therefore, the appellant M/s. Jindal Fibres is the importer of the imported goods i.e. "old and worn clothing" and as home consumption Bill of Entry No. 378 dated 18.01.2013 for DTA clearance was filed by them, they are the "beneficial owner" of the said goods i.e. "Old and used mutilated rags" which are not in conformity to CBEC's Circular No. 36/2000-Customs dated 08.05.2000 read with Instruction No. 01/2011-12 dated 14.07.2011 issued by the Deputy Commissioner of Customs, KASEZ. Further, the Adjudicating Authority has observed that for the DTA sale of waste/rejected or by products of imported goods, SEZ units are being authorized under Rule 48 of SEZ Rules, 2006 to file Bill of Entry for home consumption on behalf of the DTA buyer. Even though, if once DTA clearance as assumed as goods as imports, in the present case also for DTA clearance, the appellant Jindal Fibres had filed Bill of Entry No.378 dated 18.01.2013 on behalf of DTA unit for DTA clearance and the goods to be cleared into DTA were in the custody of the said unit till the clearance of the said goods for home consumption into DTA or till the goods are to be delivered to the DTA buyer situated at Panipat or elsewhere in India. Thus, from the definition of "importer" as defined under Section 2 (26) of the Customs Act, 1962, it is very clear that the Appellant Jindal Fibres is the importer of the said goods as the same were imported into Kandla Special Economic Zone by them by sea from outside India and also when the goods were cleared into DTA, the said goods were in the custody of the appellant Jindal Fibres till the seizure of the same. Thus, the adjudicating authority has strongly hed that the appellant no. 1 (Jindal Fibres) is the main importer and key player of all the acts of omission and commission and are liable for differential customs duty, fine, penalty etc. under Customs Act, 1962 and SEZ Act, 2005 read with SEZ Rules, 2006. The learned Commissioner (Appeals) agreed with the findings of the adjudicating authority as mentioned above and found no merits in the contentions raised by the Appellant Jindal Fibres and Appellant Shri Vikas Mittal.

23.2 I am of the view that the conclusion arrived at by the first Adjudicating Authority and by the learned Commissioner (Appeals) are based on correct interpretation of the word 'importer' as defined under Section 2(26) of the Customs Act, 1962 and Section 2(m) of SEZ Act, 2005.

23.3 I have also gone through the order passed by Single Member Bench of CESTAT, Ahmedabad in case of **M/s. Tulip Exim Pvt. Limited** vs. **CCE&ST, Ahmedabad** in Appeal Nos. C/10133,10313/2017. The Tribunal, in Para 7 of the order, observed that as per definition of 'importer', M/s. Tulip Exim Pvt. Limited cannot be considered as an importer in the facts and circumstances of this case. Accordingly, no duty liability arises and hence even if goods are liable for confiscation, no duty liability arises on the appellant. The facts of the case as mentioned in para 7, of the order are specific to that case, therefore, the observations of the Tribunal in **M/s.**

Tulip Exim Pvt. Limited cannot be extended to the facts and circumstances of the present case. I am of the view that in view of the special facts and circumstances of this case, the appellant M/s. Jindal Fibres Pvt. Limited is the 'importer' of the goods i.e. cotton sweaters (knitted) as the same were imported into Kandla SEZ through sea from outside India and when the goods were cleared into DTA, the said goods were in the custody of the appellant till the seizure of the same. It is pertinent to mention here that learned Commissioner has stated at page 10 of the impugned order that ownership of the goods was not changed till the time of seizure and this is evident from the fact that Bill of Entry was filed by the appellant M/s. Jindal Fibres on behalf of DTA Unit, paid the self-assessed Customs duty on the goods imported by DTA unit, arranged vehicles and took all the responsibility of DTA sale and for delivery of the goods. The trucks were parked in the parking area of the SEZ and the parking area is within the vicinity of the SEZ. Therefore, the liability to pay differential duty arises on the appellant M/s. Jindal Fibres and not on the DTA unit. It has also been observed at page 10 that till the clearance of the goods for home consumption in DTA M/s. Jindal Fibres was the importer of the said goods. Hence all the acts of omission and commission under law with respect to this case remains on the appellant M/s. Jindal Fibres.

23.4 As far as the second issue is concerned, the learned Commissioner (Appeals) has stated at page 8 of the impugned order that the adjudicating authority in para 41 of the impugned order has observed that the said goods are having three or four cuts, but not in the manner specified in the guidelines outlined in the Circular No. 36/2000-Customs dated 08.05.2000. Besides, it is found that the said three or four cuts are very near to the seams in specific sizes explained at para 3.1.5 above which does not make the said old and used clothes completely mutilated and can be serviceable. The language and spirit of the Circular No. 36/2000-Cus.dated 08.05.2000 is clear, explicit and without any space of ambiguity, therefore, not subject to vague and prejudiced interpretation. Circular No.36/2000-Cus.dated 08.05.2000 clearly says that the old and used worn cloths must be subjected to three or more cuts through the entire length of the garment, in a crisscross manner, not along the seams for import into India. Then only the Rags are to be considered completely mutilated and totally unserviceable and beyond repair. Here the basic bone of contention of the said unit is heavily relying upon the word "this can be ensured" in para 3 of the said Circular No.36/2000-Customs dated 08.05.2000. Here the word is "can" and has to be construed accordingly because this shows the intention of the circular whereas the unit or his authorized representative/authorized signatory is interpreting it as "may" by making their own interpretation as other manner of mutilation. Therefore, "can be ensured" is not to be interfered within the light of the fact that the said circular clearly draws the demarcation line that if the goods are not properly mutilated it will fall under CTH 63.09 not under CTH 63.10. Further as contended by the unit that the Para 1 of the said Circular says only about unserviceable & irreparable nature of the old & used goods. However, Para 1 of the said Circular No. 36/2000-Cus dated 08/05/2000 cannot be read independently but have to be read in conjunction with Para 3, 4 and 5 of the said Circular. Therefore, it is wrongly submitted by the unit that the old used & worn clothes, if unserviceable & beyond repair should be classified under 63.10 but it has been amply clarified by Para 3 & 4 that this unserviceable character must be of more than three cuts or more through the entire length of the garment in a criss-cross manner, not along the seams. The learned Commissioner (Appeals) has observed that I agree with the findings of the adjudicating authority and do not find any merits in the contention raised by the Appellant No. 1 Jindal Fibres and Appellant No.2 Shri Vikas Mittal.

I agree with the conclusion arrived at by the Adjudicating Authority and Commissioner (Appeals) as mentioned above. It will be appropriate to reiterate the provisions of Circular 36/2000-Customs dated 08.05.2000 which is as under:-

(i) The garments are only old and used but serviceable after repair, they must be classified under CTH 63.09. Only such garments which are totally unserviceable and beyond repair, should be classified under CTH 63.10.

(ii) In cases where garments declared to be rags are actually found to be only old and used garments falling under heading 63.09, as is mostly the case, the imposition of fine and penalty for violation of EXIM Policy should be such that it not only wipes out the Margin of Profit (MOP) but also acts as a deterrent against repeated imports.

(iii) Rags to be considered as completely mutilated should be totally unserviceable and beyond repair and this can be ensured by applying criteria of three cuts or more, through the entire length of the garment, in a criss-cross manner, not along the seams.

(iv) Only such garments, which are found to be completely mutilated rags, as imported, should be allowed clearance without license. Clearance subject to post importation mutilation must not be allowed.

(v) In case it is found that garments are not completely mutilated rags i.e. garments having less than 3 cuts, the same should be allowed clearance only on such fine and penalty which not only wipes out the MOP but also acts as a deterrent against future imports.

From perusal of the provisions in the above circular, it is clear that attempt has been made through the circular to allow bonafide importers to import totally unserviceable and beyond repair garments which cannot be reused by undertaking minor repairs and can only be used for making fibres and Attempt has also been made to prevent misuse of this arrangement by imposing penalty and fine on import of such goods/ clothes which can be sold after minor repairs. In para (v) of the circular it has been mentioned that clearance be allowed only on such fine and penalty which not only wipes out the margin of profit (MoP) but also acts as a deterrent against future imports. The learned Commissioner (Appeals) has rightly mentioned in the Order-in-Appeal at page 8 that it has been amply clarified by para 3 and 4 that this unserviceable character must be of three cuts or more through the entire length of the garment in a criss-cross manner, not along the seams. It is also pertinent to mention here that in the report dated 04.02.2013 given by the Appraiser, it has been mentioned that the used and mutilated cloths sold by the appellant in DTA with incisions on both the sleeves 8 to 13 centimeters far from the shoulder seams. The length of incision was 7 to 10 inches on an average. Incision was also found on back side of the sweater 2 to 4 inches at below the neck. In para (iii) of the Circular it has been mentioned that there should be three cuts or more through the entire length of the garment, in a criss-cross manner which means that only completely mutilated rags imported, should be allowed clearance without license. Therefore, by reading the provisions of para (iii) and (iv) of the above mentioned circular conjointly, it becomes clear that the garments should be mutilated and cut in such a way that they are in the opinion of the concerned Customs authority completely "mutilated rags". Thus, I agree with the findings of the learned Commissioner and the first adjudicating authority that the goods, cotton sweaters (knitted) were not found completely mutilated rags in accordance with the relevant circular No. 36/2000-Customs dated 08.05.2000.

23.5 Learned Counsel for the appellant has also submitted that Shri Vikas Mittal, Authorised Signatory of M/s. Jindal Fibres Pvt. Limited has not acted in such a way or made any such omission or commission which would render the imported goods liable for confiscation and therefore Section 114A of the said Act was not attracted in the case.

I do not agree with the contention of the learned Counsel for the appellant. Learned Commissioner (Appeals) had stated in para 11 of the impugned order that the Adjudicating Authority has already discussed in para 45 of the impugned order that the appellant no. 1 is the main importer and key player of all the acts of omission and commission and is liable for differential Customs duty, fine penalty etc. under Customs Act, 1962 and SEZ Act,2005 read with SEZ Rules, 2006. The Adjudicating Authority has also discussed in para 50 of impugned order that the appellant is liable for penalty under Section 114A of the Customs Act, 1962 for willful suppression of the facts and for their omissions and commissions as explained above in the light of the judgement **Visen Industries Limited** vs. **Commissioner of Customs** 2017 (354) ELT 319 (Guj.). The adjudicating authority has further observed that the appellant no. 2 Shri Vikas Mittal, being authorised signatory of the appellant no.1 (Jindal Fibres) has played an active role in import of the goods in question, hence the Adjudicating Authority held him liable for imposition of penalty under Section 114AA of the Customs act. 1962 for his acts of omissions and commissions explained above, in light of judgement **Rajneesh Bedi** vs. **Commissioner of Customs, Amritsar** - 2009 (235) ELT 496 (Tri.- Del), and **Commissioner of Central Excise, Vapi** vs. **Bharat Singh** - 2009 (245) ELT 482 (Tri-Ahmd).

24. After hearing the arguments of the learned Counsel for the appellant and the AR for the Department and going through the impugned order, I am of the view that Shri Vikas Mittal i.e. Appellant No. 2, authorised signatory of the main Appellant M/s. Jindal Fibres Pvt. Limited was looking after all the affairs of the unit and played an active role in the import of the goods in question, therefore, no error was committed in imposing penalty on Shri Vikas Mittal, Authorised Signatory of the appellant unit under Section 114AA of the Customs Act, 1962 for his act of omission and

commission by the first Adjudicating Authority and by the Commissioner (Appeals).

25. In view of above discussion, I have come to the conclusion that the appeals preferred by both the appellants are devoid of any merit and are liable to be rejected whereas the impugned order passed by learned Commissioner (Appeals) and the first Adjudicating Authority are well explained and in accordance with the law and relevant circular and therefore, the impugned orders are liable to be confirmed.

26 Consequently, the appeals are rejected.

(Order dictated and pronounced in the open Court on 03.07.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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