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

REGIONAL BENCH - COURT NO. 2

CUSTOMS Appeal No. 10366 of 2022-SM

[Arising out of Order-in- Appeal No MUN-CUSTM-000-APP-334-21-22 dated 24.03.2022 passed by Commissioner (Appeals) of CUSTOMS- Ahmedabad]

Unnati Cargo .... **Appellant**
ROOM NO 39 MARUTI NAGAR-2 NEAR AMBICA NAGAR
MUNDRA, MUNDRA, GUJARAT-370421

VERSUS

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

APPEARANCE :

Shri Vikas Mehta, Consultant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Revenue.

CORAM:

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

DATE OF HEARING : 14.07.2025
DATE OF DECISION: 12.11.2025

FINAL ORDER NO. 11071/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the impugned order dated 24.03.2022 passed by Commissioner (Appeals), Customs, Ahmedabad through which he upheld the Order-in-Original passed by Additional Commissioner dated 25.11.2020. However, he set-aside the penalty imposed by the Adjudicating Authority under Section 114(ii) and also reduced the penalty imposed on the appellant under Section 114AA to Rs. 2,00,000/- only, finding the amount of penalty incommensurate with the alleged offence.

2. Brief facts of the case are that the appellant had filed certain shipping bills on behalf of the exporter M/s Vijay International, Pune. The description of goods was declared as "Leather Sleeveless Jacket". During the course of examination, it was observed that jackets were small in size. It was found that the jackets were made of fabric/ material which appeared to be leather and roughly stitched. The size of jackets was fit for kids. The quality of materials used in manufacturing of the goods appeared to be of inferior quality and the value declared per piece was on higher side, therefore the goods were placed under seizure under Section 110 of the Customs Act, 1962 under a reasonable belief that the goods are liable to confiscation under Section 113 (i) & (ia) of the Customs Act, 1962. Further, on physical verification of the premises of the exporter, it was found that it was a residential premises and no such firm was found existing. Thus the address appeared to be fake. In these circumstances, a show cause notice dated 22.04.2020 was issued to the appellant proposing penalty under the provisions of Section 114AA of the Customs Act, 1962. The adjudicating authority vide order dated 25.11.2020 imposed penalty of Rs. 5,00,000/- under section 114(ii) of the Customs Act, 1962 and Rs.5,00,000/- under section 114AA of the Customs Act, 1962.

2.1 Aggrieved from the Order-in-Original passed by learned Adjudicating Authority, the appellant filed appeal before Commissioner (Appeals) Customs, Ahmedabad. Learned Commissioner (Appeals) upheld the order passed by Adjudicating Authority and found that the appellant is liable for penalty. However, he set-aside the order for imposition of penalty on the appellant under Section 114(ii) because there was no proposal of imposing penalty under Section 114(ii) in the Show Cause Notice. He also reduced the penalty from Rs. 5,00,000/- to Rs. 2,00,000/- imposed by the Adjudicating Authority under Section 114AA of the Customs Act, 1962 finding the amount of penalty incommensurate with the offence. Feeling aggrieved from the impugned order dated 24.03.2022 passed by learned Commissioner (Appeals), present appeal has been filed by the appellant before this Tribunal.

3. Learned Consultant for the appellant submitted that the impugned order passed by the learned Commissioner (Appeals) is a non-speaking order as it does not deal with the submissions made by the appellant before the learned Commissioner (Appeals) and the appellant is not liable to any penalty under the provisions of Section 114AA of the Customs Act, 1962. He has also submitted that the pre-requisite for invocation of Section 114AA is prior knowledge or intention. Lower authorities have not established presence of knowledge or intention on the part of appellant at any point of time either prior to or at the time of filing shipping bills. It is an admitted position that goods were received in boxes and appellant had no means to open the same before their arrival and examination by Customs officers. Therefore, the appellant is not liable to penalty under Section 114AA of Customs Act, 1962. To support his above argument, learned Consultant relied upon the following decisions:-

(a) Sea Queen Shipping Services Pvt. Limited vs. Commissioner of Customs, Chennai-2020-TIOL-76-CESTAT-MAD.

(b) WCI Shipping Pvt. Limited vs. Commissioner of Customs, Chennai, 2020 (372) ELT 369 (T)

(c) Falcon India vs. Commissioner of Cus., ICD, Tughlakabad, New Delhi, 2018 (363) ELT 835 (Tri.-Del.)

(d) Fast Cargo Movers v/s Commissioner of Customs, Jodhpur, 2018 (362) ELT 184 (Tri.-Del.)

Learned Consultant for the appellant also submitted that in the case of **Access World Wide Cargo** vs. **Commissioner of Customs, Bangalore –**

2022 (379) ELT 120 (Tri. Bang.) the Tribunal has held that provisions of Section 114AA of Customs Act, 1962 is not applicable to Customs Broker.

3.1 Learned Consultant for the appellant also submitted that the appellant was working as Customs Broker and he had prepared the shipping bills on the basis of documents like invoice and packing list received from the exporter. It is settled law that it is for the exporters to ensure the correctness of the value declared in the export documents and not for the Customs House Agent to compare the invoice price with the market price of identical goods. In support of above arguments, learned Consultant for the appellant relied upon the following decisions:-

(a) Brijesh International vs. Commissioner of Customs (Import & General), New Delhi, - 2017 (352) E.L.T. 229 (Tri.-Del.)

(b) Commr. of Cus., Tuticorin vs. Moriks Shipping and Trading Pvt. Limited, - 2008 (227) ELT 577 (Tri.-Chennai).

(c) P.P. Dutta vs. Comm. of Cus. & C. Ex., Ghaziabad - 2014 (313) E.L.T. 351 (Tri.-Del.).

(d) World Cargo Movers v/s Commissioner of Customs, New Delhi, 2002 (139) E.L.T. 408 (Tri.-Del.)

(e) Dipankar Sen v/s Commissioner of Customs, Kolkata, 2003 (159) E.L.T. 260 (Tri.-Kolkata)

3.2 Learned Consultant for the appellant further submitted that in the absence to show that appellant had prior knowledge about the alleged inferior quality of goods and over-valued nature thereof, the lower authorities have erred in upholding the allegation of complicity and facilitation levelled against the appellant. It has been prayed by the learned Consultant that the impugned order passed by learned Commissioner (Appeals) be set-aside and the appeal may be allowed.

4. Learned AR for the department reiterated the impugned order passed by learned Commissioner (Appeals) and prayed that the impugned order has been passed by learned Commissioner (Appeals) in accordance with various provisions of Customs Act, 1962. There is no illegality in the impugned order and therefore the impugned order passed by learned Commissioner (Appeals) may be upheld and the appeal may be rejected.

5. I have heard the learned Consultant for the appellant and learned AR for the department and perused the record.

5.1 The learned Commissioner (Appeals), at page 5 para-6 of impugned order has held that appellant contended that they have also obtained all the required documents from the exporter before filing of shipping bills and verified the documents from the website of different authorities. Mostly the clients of a Customs Broker are situated at different places in the country. The appellant has also contended that it is not possible for them to physically verify the places of their clients at different parts of the country and it is not mandate under the CBLR-2018 to verify the business premises physically thus he had complied with the provisions of Regulation 10(n) of the CBLR-2018. The exporter M/s. Vijay International, Pune attempted to export the goods namely 'Lather Sleeveless Jacket' which were found to be highly over-valued. The examination of goods, the market survey and other investigation in the matter clearly established the charge of over-valuation and in adjudication, the goods were found highly over-valued and held liable to confiscation under Section 113(i) of the Customs Act, 1962. Considering the appellant was the Customs Broker in this case and a Customs Broker has certain obligations under Customs Broker Licensing Regulations, 2018, the appellant cannot claim total innocence and liable for penalty.

5.2 I do not agree with the above conclusion arrived at by the learned Commissioner (Appeals) and I am of the view that the conclusion arrived at by learned Commissioner (Appeals) is not sustainable. I am of the view that the role of the appellant was limited to filing shipping bills in question. He was required to verify the correctness of ISD Number, GSTIN, Identity of the client and the address through the KYC documents. The regulation 11(n) of CBLR, 2018 does not contemplate that the Customs Broker should physically visit the premises of importer, exporter. The issue has already been decided in the following case laws:-

(a) **Anax Air Services** – Final Order No. 50002/2022 dated 01.01.2022.

(b) **S. Prakash Kushwaha** – 2023 (384) ELT 89 (Tri. Del.)

(c) **Perfect Cargo & Logistics** – 2021 (376) ELT 649 (Tri. Del.)

5.3 Further, no evidence has been produced by the Revenue that the Customs Broker had any knowledge about the over-valuation of the alleged Sleeveless Leather Jackets. The exporter had provided KYC for Aadhar, Pan Card, IEC Certificate etc. and therefore, no verification was necessary on the part of the appellant in respect of the alleged exporter.

5.4 Further in **Sai Shipping Services – 2009 (239) ELT 104** and in **Ashok Jaiswar – 2006 (200) ELT 122** it has been held that in absence of any evidence of appellant's involvement in the alleged fraud, no action can be initiated against the Customs House Agent.

6. I am of the view that it is sufficient for the Customs House Broker to verify the exporter on the basis of KYC documents and he is not required to visit the residential premises or business premises of the exporter. He is not physically required to verify the address. Therefore, I am of the view that

there was no ground for imposing penalty upon the appellant under Section 114(ii) or Section 114AA of the Customs Act, 1962. The impugned order passed by learned Commissioner (Appeals) is not sustainable and liable to be set-aside whereas the appeal is liable to be allowed.

7. Consequently, the appeal is allowed, impugned order passed by learned Commissioner (Appeals) is set-aside.

(Order pronounced in the open court 12.11.2025*)*

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

KL