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

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 275 of 2012

(Arising out of OIO-KDL-COMMR-08-2012-13 dated 25.07.2012 passed by the Commissioner of Customs -Kandla)

Anand D Mehta **.....Appellant**

Proprietor of Ad Mehta clearing Agency, Office No. 16
Kasez Inds, Association Building, Kandla, Special
Economic Zone, Gandhidham, Kutch-Gujarat

VERSUS

Commissioner of Customs-Kandla **.....Respondent**

Customs House, Near Balaji Temple
Kandla 370 210

APPEARANCE:

Shri. Nirav P Shah, Advocate for the Appellant
Shri. Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM: HON'BLE SH. S. S. GARG,MEMBER (JUDICIAL)

Final Order No.10332/2026

DATE OF HEARING:07.05.2026
DATE OF DECISION:08.05.2026

S. S. GARG

The Present appeal is directed against the impugned order dated 25.07.2012 passed by the Commissioner of Customs, Kandla whereby the Learned Commissioner has imposed the penalty of Rs. 1 Lakh on the appellant under Section 112(a) of the Customs Act, 1962.

2. Briefly the facts of the present case are that M/s. Rodex International having importer-Exporter code Number 3710001358 was a partnership concern engaged in trading activities of various types of items for which Development Commissioner, Kandla Special Economic Zone, had issued Letter of approval No KASEZ.IA/1880/2002-03/1907, dated 08.05.2002. Intelligence was gathered by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (DRI) that certain goods were to be smuggled in a container bearing number GLDU-0279344 surreptitiously by concealing them in the goods imported in the name of Rodex. Hence, the officers of DRI kept surveillance and found that Rodex had filed bill of Entry

No.0001296 dated 02.02.2011 before the Customs authorities KASEZ, Gandhidham, for the import of 73 packages of Refrigerators, LCD/Plasma TVs in container number GLDU-0279344.

2.1 On reasonable belief that the consignment covered under the said earlier Bill of Entry might be containing smuggled/mis-declared goods, the same were subject to examination and the Officers of DRI carried out examination and found that the said container was stacked with packages of Panasonic Refrigerators, Sony LCD TVs & Panasonic Plasma Tvs. The Officers recovered four black coloured polyethylene bags which were concealed in the back side of four refrigerators and opened and found 28580 pieces of 'Micro' Brand SD Memory Cards of 2 GB. The said Memory Cards were not declared in the Bill of Entry filed by Rodex.

2.2 After the thorough investigation, a show cause notice dated 07.07.2011 was issued by the Commissioner of Customs, Kandla and after following the due process, the same was adjudicated and penalties on different persons as mentioned in the impugned order was imposed including a penalty of Rs. 1 Lakh on the present appellant which he has challenged by filing the present appeal.

3. Heard both sides and perused the material on record.

4. Learned Counsel appearing on behalf of the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and binding judicial precedents. He further submits that in the impugned order passed by the Commissioner, it has been specifically mentioned by the Learned Commissioner that the appellant who is acting as a CHA has only assisted M/s. Rodex International in preparation of the document but the Bill of Entry was filed on SELF basis by Rodex. He further submits that it has also been recorded in the impugned order that the main person behind the import was Lilaram Arjandas Asudani who was in touch with the present appellant and

the present appellant was getting some consideration from him. He further submits that the Customs has failed to prove any material evidence on record to show that appellant had the knowledge above the concealment of Memory Chip Cards in the imported items. He further submits that the penalty has been imposed without establishing any proof of knowledge of concealment of Memory Cards. Learned Counsel has relied upon the following judgments to show that without the corroborative evidence pinpointing the involvement of the CHA, Penalty under Section 112 (a) cannot be imposed. Reliance is placed on following judgments:-

- 2021 (378) ELT 528 (Tri-Bang.)
- 2008 (222) ELT 137 (Tr9-Ahd.)
- 2004 (171) ELT 72 (Tri-chennai)
- 2004 (165) ELT 97 (Tri-Chennai)
- 2003 (159) ELT 260 (Tri-Kolkata)
- 2002 (145) ELT 83 (Tri-Kolkata)

4.1 He further submits that the penalties imposed on the main culprit i.e. Lilaram Arjandas Asudani has already been set aside by this Tribunal vide its Final Order No. 12974-12975/2024 dated 03.12.2024. He also submits relied upon the judgment in the case of G. NARAYAN & CO. VS. COMMISSIONER OF CUSTOMS, MANGALORE reported in 2021 (378) ELT 298 (Tri. Bang.) wherein, it has been held that penalty under Section 112(a) of the Customs Act is not imposable on the CHA when no proceedings are initiated against him under the Customs Broker Licensing Regulations, 2013.

5. On the other hand, learned AR for the Department reiterates the findings of the impugned order.

6. I have considered the submissions of both the parties and perused the material on record. I find that in the impugned order itself the Commissioner has recorded that the present appellant who is a CHA has only helped the Rodex International in filing the Bill of Entry which was filed by Rodex on SELF basis. Further I find that the Customs has failed to bring on record any corroborative evidence which clearly shows that the appellant

had knowledge that 28580 pieces of Memory Cards are concealed by the Rodex International.

6.1 Further, I find that this Tribunal vide its Final Order No. 12974-12975/2024 dated 03.12.2024 has already set aside the penalty imposed on the mastermind Lilaram Arjandas Asudani. And Further I find that no proceeding against the appellant has been initiated under CBLR Regulations. And In view of the judgment in the case of G. NARAYAN & CO., the penalty cannot be imposed on the CHA without initiating any proceeding under the Customs Broker Licensing Regulations, 2013. In this regard, I may refer to para 6 of the said judgment which is reproduced below:-

> *"6. On the other hand the learned AR reiterated the impugned order. After considering the submissions of both the parties and on perusal of the record, I find that the Revenue has not been able to bring any evidence on record which shows that the appellant had prior knowledge regarding the violation of the provisions of the Customs Act. Further I find that this Tribunal in its Final Order No. 20523/2019 dated 04/07/2019 reduced the penalties imposed on the passenger after holding that there was no suppression of facts by the passenger. Once the passenger has not suppressed any material fact then how it can be said that the appellant has abetted the passenger in the commission of certain violation of the Customs Act. Further I find that in the case of Triways Transportation Pvt. Ltd. Vs. Commissioner of Customs, New Delhi – 2018 (363) E.L.T. 1027 (Tri.-Del.) wherein it was held that penalty under Section 112(a) of the Act is not imposable on the CHA when no proceedings are initiated against him under the Customs Brokers Licensing Regulations, 2013. In the present case, no proceedings were initiated against the appellant under the Customs Broker Licensing Regulations, 2013. Moreover, issuance of show-cause notice in de novo remand proceedings is not permitted under law. In view of my discussion above, I am of the considered opinion that in the facts and circumstances of the present case, the imposition of penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) on the appellant is not sustainable in law and therefore I set aside the same by allowing the appeal of the appellant".*

6.2 Further, I find that the other decisions relied upon by the appellant cited supra wherein it has been clearly held that without establishing any proof of knowledge of concealment, penalty on CHA is not imposable under Section 112(a) of the Customs Act, 1962.

7. By following the ratio of said decision, I hold that the imposition of penalty on the appellant is not sustainable in law and Accordingly, I set aside the same by allowing the appeal of the appellant.

(Pronounced in the open court on 08.05.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

Prachi