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

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 10681 of 2024

[Arising Out Of OIO-MUN-CUSTM-000-COM-019-04-24-25 Dated- 05/08/2024 passed by Pr. Commissioner of Customs Mundra]

Sh. Ankur Jain **.....Appellant**
Proprietor of M/s Devji Traders, 4309-10/5
Jai Mata Market, Tri Nagar, Delhi-110035

VERSUS

Commissioner of Customs-Mundra Customs **.....Respondent**
Office of the Pr. Commissioner of Customs, Customs
House, Mundra, Kutch, Mundra Port and Special Economic Zone
Mundra, Kachchh, Gujarat-370421

APPEARANCE:
Shri Ashwani Kumar, Advocate for the Appellant
Shri Rahul J Dave, Superintendent, (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 10535/2026

DATE OF HEARING:17.08.2026
DATE OF DECISION:17.08.2026

SOMESH ARORA

Heard both the sides. The appellant has been subjected to imposition of a Penalty of Rs. 7,50,000/- under Section 112 (b) of the Customs Act. The charge, as has been agreed by both sides, is that the goods were lying for some time at the premises of the present appellant.

2. The appellant has indicated that he had no knowledge that the goods were offending in nature and only stated that he had sold the goods i.e. Release Paper, on a High Sea Sale basis and he never knew that these were the very same goods and he had allowed goods to simply accommodate the

regular customer Shri Himanshu Chopra, for some time to allow the goods at his premises. The CHA, however, has attributed that the appellant had knowledge. However, the statement of the CHA has not been corroborated by the present appellant nor any statement of Shri. Himanshu Chopra, Director of the and M/s. A. M. Vinyl Pvt Ltd has been shown to be recorded on this aspect, to verify whether he had told him to keep the goods in the appellant's factory, as some repair work was undergoing in his factory, and he had no storage space. Both sides agree, there was a legal requirement that the paper (i.e. the goods) should be stored at the designated place only after intimation done duly to the department, same was not done. Even when goods remained for few days, in this particular case.

This Court finds that the statement of CHA is not corroborated. The statement of present appellant is not culpatory and the statement of Himanshu Chopra no on record on this aspect.

2.1 In view of the matter, this Court is of the view that the ingredients of Section invoked i.e. Section 112(b) have not been complied with, as the knowledge of offending goods is not established This Court relies on the following judgments as follows:-

- 1978 (2) E.L.T. (J 399) (S.C.)- N. B. SANJANA, ASSISTANT COLLECTOR OF CENTRAL EXCISE, BOMBAY AND OTHERS Versus THE ELPHINSTONE SPINNING AND WEAVING MILLS CO. LTD
- 1992 (61) E.L.T. 19 (Mad.)- CARBONINK PRODUCTS Versus GOVERNMENT OF INDIA
- 2010 (255) E.L.T. 264 (Tri. - Mumbai)-JOGANI TYRES (INDIA) Versus COMMISSIONER OF CUSTOMS (P), MUMBAI.

To indicate that quoting wrong provision cannot come to the rescue of violator.

3. This Court is of the view, that even if 112(b) cannot be invoked in the present circumstances, the proper course should have been to impose

penalty under Section 117, which in this case has not been imposed nor proposed.

4. The learned counsel has no objection, if fair penalty is imposed under Section 117 even at this stage for the act of not informing, the Customs authority about the designated place. Accordingly penalty of Rs. 10,000/- is being imposed under Section 117. Penalty under Section 112(b) is set aside.

5. Appeal is allowed in above terms.

(Dictated and pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi