

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT No. I

**Customs Appeal No.70074 of 2020**

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-1100-19-20 dated 20/11/2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

**Shri Sanjay Prabhakar, Proprietor, .....Appellant**

(M/s Sanjay Prabhakar,  
GH-1/142, Paschim Vihar, New Delhi-110063)  
VERSUS

**Commissioner of Customs (Pre.), Ghaziabad....Respondent**

(Customs, ICD Loni, Ghaziabad)

**APPEARANCE:**

Shri Sharad Chandra Srivastava, Advocate &  
Shri Ashish Bhatt, Advocate for the Appellant  
Shri Manish Raj, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.70834/2024**

DATE OF HEARING : 10 September, 2024  
DATE OF PRONOUNCED : 12 December, 2024

**SANJIV SRIVASTAVA:**

This appeal is directed against Orders-in-Appeal No. NOI-CUSTM-000-APP- 100 -19-20 dated 20.11.2019 of the Commissioner, CGST (Appeals), Noida. By the impugned order penalties imposed on the appellant by Order-in- Original No. 11/JC/CUS/ICD-LONI2018 dated 21.08.2018 under Section 114 (i) and 114AA of the Custom Act, 1962 have been upheld.

2.1 The officers of DRI, Delhi Zonal Unit, Delhi, on the basis of intelligence that counterfeit Vimal Gutkha was stored and attempted to be exported seized plastic pouches meant as packing material for the packing of counterfeit Vimal Gutkha

stored in a godown in Kanjhawala Village, New Delhi. It came to the knowledge of the officers that one export consignment containing counterfeit Vimal Gutkha had been cleared in container no.SHKU6319529 vide Shipping Bill No. 7549865 dated 24.07.2017 from ICD Loni, for export to Kuwait. The said container was detained and examined by the officers of DRI, JRU, Jamnagar at Customs House, Pipavav. On examination, the goods were found to be mis-declared. There were 350 sacks and 246 boxes in the container. The sacks contained pouches of counterfeit Vimal Gutkha instead of Pan Masala as was declared in the Shipping Bill. The mis-declared goods were seized.

2.2 Investigation undertaken revealed that the appellant had not fulfilled the obligations of the Customs Broker Licensing Regulations, 2013 as also admitted by him in his statements recorded under Section 108 of the Act *ibid*,-

- By not employing G-card or H-card employee by him in his firm. He used to get customs clearance of export cargo from ICD Loni through an unauthorized person employed by him.
- Despite having knowledge and awareness of his obligations/duty as prescribed in the Rule 11 of the Customs Broker Licencing Rules, 2013, he had not acted prudently while arranging Customs clearance of the export consignment examined vide Shipping Bill 7549865 dated 24.07.2017 and shipped in Container No. SHKU 6319529.
- He had knowledge that the consignment contained mis-declared/ un-declared goods i.e counterfeit Vimal Gutkha in plastic pouches but to earn easy and quick money, he failed to inform this fact to the Customs as per Rule 11 of the Customs Broker Licencing Rules, 2013 due to greed for ease money.

2.4 Therefore, appellant knowingly indulged in facilitating the export of prohibited goods i.e. Gutka, in plastic pouches by providing logistic support viz transport, preparation of export documents, custom clearance etc. in contravention of provision

of Section 113 of the Customs Act, 1962 as well as in contravention of Plastic Waste(Management & Handling) Rules, 2011. He had provided container for stuffing of the prohibited goods at unspecified address even though the exporter in the instant case was not having any valid permission for self /factory sealing. Further, he 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. Thus, Sh. Sanjay Prabhakar, Proprietor of Customs Broker Firm M/s Sanjay Prabhakar had abetted smuggling of prohibited goods.

2.5 On completion of the investigations a Show Cause notice dated 05.02.2018 was issued to various noticees including the appellant. Appellant was asked to show cause as to why penalty under Section 114(1) and 114AA of the Customs Act, 1962.

2.6 The show cause notice was adjudicated as per the order in original referred in the para 1 above, imposing penalty of Rs 25,00,000/- under Section 114 (i) and Rs 25,00,000/- under Section 114AA of the Customs Act, 1962.

2.7 Aggrieved appellant filed appeal before Commissioner (Appeal), which has been dismissed as per the impugned order.

2.8 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Sharad Chandra Srivastava & Shri Ashish Bhatt, Advocate for the appellant and Shri Manish Raj, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that,-

- the Impugned Order has been passed contrary to the principles of natural justice as the Appellant's request for cross examination was denied by the learned Authorities below without any valid reasoning Moreover, the entire allegations leveled on the Appellant are solely on the basis of the statements of Co-Noticees whose cross examination was denied to ascertain the veracity of their statements and thus it is a settled law that the statement cannot be

relied without cross examination of tenderers of statement of persons. Reliance is placed on the following decisions:

- Laxman Exports [2002(143) ELT 21 (SC)];
  - Andaman Timber Industries [2015 (324) E.L.T. 641 (SC)];
  - G-Tech Industries [2016(339) E.L.T. 209 (P&H)];
  - Raklhi Ispat Ltd. [ 2001(129) ELT 701 (Tri.)];
  - Kedia Overseas [2005 (179) ELT 156 (Tri)];
  - Gobinda Das [2023 (385) E.L.T. 722 (Tri. Kolkata)].
- Authorities below have place reliance on the self incriminating statements of Appellant that was taken by force and coercion by the DRI for fastening guilt upon him and for imposing the penalty without appreciating the very fact that the said statements were duly retracted by the Appellant at first available opportunity before the Hon'ble Court of CMM, Patiala House Court on 22.08.2017 and hence cannot be relied as such.
- Authorities below have gravely erred by not taking into consideration that a Custom House Agent cannot be penalized for misdemeanor of the importer or exporter unless he is aware of the same.
- D.S.Cargo Services [2009 (247) E.L.T. 769];
  - Prime Forwarders [2008 (222) E.L.T 137];
  - Moriks Shipping and Trading Pvt. Ltd [2008 (227) E.L.T 577],
  - World Cargo Movers [2002 (139) E.L.T 408].
- in the present case Shri Daya Shankar Superintendent and Shri Manoj Srivastava, Inspector who were co appellants in the subject Order-in-Original and have attended the impugned export and granted Let Export Orders have since been absolved from penalty by the learned Commissioner (Appeals) vide Order-in-Appeal No. NOI-CUSTM-000-APP-142-19-20 and NOI-CUSTM-000-APP-142-19-20 both dated 08.05.2019, the penalty on the officers who examined the goods have been set aside

on the ground that they were not having culpable mind but were negligent and careless in discharging their duty.

- Appellant was also appointed as a CHA by the Customs authority and in the present case there was no malafide intention or contumacious conduct on his part and he was not aware about the presence of Gutka instead of pan masala in plastic bags and hence penalty may be set aside on the ground of parity.
- The penalty imposed under Section 114 and 114AA of the Customs Act 1962 is patently wrong and illegal. It is submitted that penalty under Section 114 of the Customs Act, 1962 is imposable on any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, while Appellant being CHA had no knowledge about the alleged mis-declaration in the instant matter. Moreover, in the present case all documents that were filed before Customs were provided by the exporter and hence Appellant had not intentionally made any signs or declaration statement or document which is false or incorrect in any material particular before Customs qua the present consignment

3.3 Learned authorized representative reiterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

*"5.1 Now coming to the main issue, I find that the adjudicating authority imposed penalty of Rs. 25, 00,000/- under Section 114(i) of the Act, and Rs. 25,00,000/- under Section 114AA of the Act, on the appellant on account of his misdeeds leading towards the smuggling of prohibited goods. In the light of misdeeds his statement and of the*

*co-accused recorded under section 108 of the Act, the list of his activities in the case is summarized as below;*

- a) He did Customs work and logistics work for the consignment exported in container no. SHKU6319529 at ICD, Loni under Shipping Bill No.7549865 dated 24.07.2017, filed by M/s Navrang Jewel and Export, Ghaziabad;*
- b) He was contacted by two persons viz. Sh. Mehmood and Sh. Shubham Garg for arranging customs clearance and logistic support for the export consignment and they told him to export Gutkha and other house hold items to Kuwait for which he agreed to do this work for Rs. 1.50 lakh.*
- c) The consignment covered under Shipping Bill No.7549865 dated 24.07.2017 containing Gutkha and other miscellaneous items was loaded at the godown near Kanjhawala Chowk, Delhi but there was no factory/ godown stuffing permission for this firm. At the time of stuffing of the goods his representative was present.*
- d) The details of items i.e. gutkha and other house hold items covered under Shipping Bill no.7549865 dated 24.07.2017 were provided by Sh. Mehmood and Sh. Shubham and invoice and packing list was prepared in his office by one of his employees.*
- e) He wrongly stated in his statement dt. 06-08-2017 that he was not aware of the consignment containing gutkha. He knew that there was gutkha in the consignment being exported by the firm. He purposely filed free shipping bill for export of these goods on the request of Sh. Mehmood*
- f) He was aware of the Instruction No.528/ 69/2011-STO(TV) dated 30.08.2011 issued by Central Board of Excise and Customs according to which export of pan masala/gutkha packed in plastic sachet /plastic material in any form would be in contravention of the provisions*

*of Plastic Waste (Management & Handling Rules, 2011).*

*g) CRN slip no, F170727006 was managed by him on the basis of fabricated documents.*

*h) No G-card or H-Card was employed in his 'firm in violations of Customs Broker Licensing Regulation, 2013. He was the holder of digital signature and Shipping Bills were filed by him. He used to get customs clearance of export cargo from ICD Loni through an unauthorized person employed by him. Despite having knowledge and awareness of his obligations/ duty as prescribed in the Rule 11 of the Customs Broker Licencing Rules, 2013, he had not acted prudently while arranging Customs clearances of export consignment examined vide Shipping Bill 754986 24.07.2017 and shipped in Container No. SHKU 6319529. He admitted that he had abetted and facilitated the smuggling of the counterfeit Vimal Gutkha vide Shipping Bill 7549865 dated 24.07.2017 filed on behalf of Sh. Salim Ismail Dola, the de-facto exporter of the seized counterfeit Gutkha in plastic pouches in contravention of the Customs Act,1962 and other allied acts read with. Customs Broker Licencing Rules, 2013. He admitted his guilt as he worked hand in hand with Sh. Salim Ismail Dola, the mastermind of the game,*

*5.2 In the light of the above narrated list of activities of the appellant in the case, I find hat the appellant had not fulfilled the obligations of the Customs Broker Licensing Regulations, 2013 as also admitted by him in his statements recorded under Section 108 of the Act ibid not employing G-card or H-card employee by him in his firm. He used to get customs clearance of export cargo from ICD Loni through an unauthorized person employed by him. Despite having knowledge and awareness of his obligations/duty as prescribed in the Rule 11 of the Customs Broker Licencing Rules, 2013, he had not acted prudently while arranging*

*Customs clearance of the export consignment examined vide Shipping Bill 7549865 dated 24.07.2017 and shipped in Container No. MRKU 6319529. He had knowledge that the consignment as above contained mis-declared/ undeclared goods i.e. counterfeit Vimal Gutkha in plastic pouches but to earn easy and quick money, he failed to inform this fact to the Customs Assistant/ Deputy Commissioner as mandated in the Rule 11 of the Customs Broker Licencing Rules, 2013 due to greed for ease money. Therefore, he knowingly indulged in facilitating the export of prohibited goods i.e. Gutka, in plastic pouches by providing logistic support viz transport, preparation of export documents, custom clearance etc in contravention of provision of Section 113 of the Customs Act, 1962 as well as in contravention of Plastic Waste(Management and Handling) Rules 2011. He had provided container for stuffing of the prohibited goods at unspecified address even though the exporter in the instant case was not having any valid permission for self factory sealing. Further, he failed to verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at he declared address by using reliable, independent, authentic documents, data or information. Thus, Sh. Sanjay Prabhakar, Proprietor of Customs Broker Firm M/s Sanjay Prabhakar had abetted smuggling of prohibited goods.*

*5.3 As regards the pleas taken by the appellant that no reliance can be placed on the alleged statement of the Noticee which was forcibly extracted from him under duress, threat, coercion and after actual physical torture during prolong illegal custody. He has lodged a complaint before the Court. I observe that the plea put forth by the notice is afterthought to save him from punishment penalty provided under the Act ibid and other allied Acts for such offences of smuggling. AS regards the request to provide opportunity to cross-examine the seizing officers, the punch*

witnesses, the officers who have recorded the statements and the co-noticees to prove the innocence was examined and the same was found frivolous and hence rejected by the competent authority vide letter dated 05.04.2018.

5.4 Lastly, regarding quantum of penalty of Rs. 50,00,000/- imposed vide the impugned order not commensurate with the gravity of offence, I find that the appellant has knowingly indulged in facilitating the export of prohibited goods i.e. Gutka, valuing at Rs. 2,52,00,000/- in plastic pouches by providing logistic support viz transport, preparation of export documents, custom clearance etc., in contravention of provision of Section 113 of the Customs Act, 1962 as well as in contravention of Plastic Waste(Management Handling) Rules 2011. Thus the appellant had abetted smuggling of prohibited goods hence adjudicating authority has rightly punished him by imposing penalty under Section 114 (i) and Section 114AA of the Customs Act, 1962 for the act or omission as above committed by him."

4.3 Original Authority has recorded the findings as follows against the appellant:

"34.1 Now, I take up whether penalty under Section 114 (i) and Section 114 AA of the Customs Act, 1962 is imposable upon Shri Sanjay Prabhakar, Proprietor of Customs Broker Firm M/s Sanjay Prabhakar , GH-1/142, Paschim Vihar, New Delhi Or not. I observe that Shri Sanjay Prabhakar, is a Customs Broker having F card No .07/2012 and hence he was required to fulfill the obligations of Customs Broker as provided in the Customs Broker Licensing Regulations, 2013 which are read as under:

"Customs Broker Licensing Regulations, 2013

(A) 2. **Definitions.** - In these regulations, unless the context otherwise requires,

*(c) "Customs Broker" means a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station;*

*(B) 11. Obligations of Customs Broker- Customs Broker shall*

*(a) obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorization whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*

*(b) transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*

*(c) not represent a client in any matter to: which the Customs Broker, as a former employee of the Central Board of Excise and Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;*

*(d) advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*

*(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;*

*(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of*

*Customs, from a client who is entitled to such information.*

- (g) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates' by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;*
- (h) 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"*

*34.2 From the investigation conducted by the DRI officers and the facts deposed by the different noticees in their statements I observe that Sh. Sanjay Prabhakar has not fulfilled the afore mentioned obligations of the Customs Broker Licensing Regulations, 2013 as also admitted by him in his statements recorded under Section 108 of the Act ibid not employing G-card or H-card employee by him in his firm. He used to get customs clearance of export cargo from ICD Loni through an unauthorized person employed by him. Despite having knowledge and awareness of his obligations/duty as Broker, he had not acted prudently while arranging Customs clearance of the export consignment as prescribed in the Rule 11 of the Customs Licencing Rules, 2013 examined vide Shipping Bill 7549865 dated 24.07.2017 and shipped in Container No. SHKU 6319529 He had knowledge that the consignment as above contained mis-declared/ un-declared goods . i.e counterfeit Vimal Gutkha in plastic pouches but to earn easy and quick money, he failed to inform this fact to the Customs Assistant/ Deputy Commissioner as mandated in the Rule 11 of the Customs Broker Licencing Rules, 2013 due to greed for ease money. Therefore, I find that he has failed*

*to fulfill the obligations of Customs Broker as provided in the Customs Broker Licensing Regulations, 2013. He abetted and facilitated the smuggling of the counterfeit Vimal Gutkha vide Shipping Bill 7549865 dated 24.07.2017 filed on behalf of Sh. Salim Ismail Dola, the de-facto exporter of the seized counterfeit Gutkha in plastic pouches in contravention of the Section 114 (i) and Section 114AA of the Customs Act, 1962 and other allied acts read with Customs Broker Licencing Rules, 2013.*

*34.3 Sh. Sanjay Prabhakar in his defence reply dated 28.03.2018 pleaded that the he was approached by Sh. Shubham Garg and Mehmood @ Guddu for customs clearance for their export consignment containing Pan masala and household products. No information was given about the illegal Vimal gutkha or plastic pouches in the containers. It is wrong to say that he had any prior knowledge that in place of Pan masala & household products illegal Vimal Gutkha was planned to be exported. There is no evidence that he knowingly prepared documents for the export of illegal vimal gutkha in disguise of pan masala. The plea put forth by the notice is not correct as he himself in his statement dated 15.12.2017 admitted that he had knowledge that the consignment as above contained mis-declared/ un-declared goods i.e. counterfeit Vimal Gutkha in plastic pouches but to earn easy and quick money, he failed to inform this fact to the Customs Assistant/ Deputy Commissioner as mandated in the Rule 11 of the Customs Broker Licencing Rules, 2013 due to greed for ease money.*

*34.4 Sh. Sanjay Prabhakar in his defence reply dated 28.03.2018 stated that the allegations hurled on him by Mehmood @ Guddu are wrong and he has wrongly stated that Sh. Sanjay Prabhakar deliberately declared Vimal Gutkha' as Pan Masala only to save himself or the actual culprits and that he was paid alleged amount of Rs.*

*1,50,000/- which was never paid to him for the said consignment. And that on instruction of Sh Salim Ismail Dola, Sh Sanjay Prabhakar booked and sent the containers to godown is completely wrong as Sh Salim Ismail Dola in his statement stated that he never met any Sanjay Prabhakar.*

*34.5 I observe that Sh. Sanjay Prabhakar is relying upon the statements of Sh. Salim Ismail Dola whereas denying the facts deposed by Sh.Mehmood@Guddu.It is pertinent to mention here that Sh. Salim Ismail Dolain his statements inter-alia stated that export firm was arranged by his friend Sh. Mehmood alias Guddu, whom he knew from last 6 years. For arranging transportation, export firm and Customs clearance, for export of first consignment, he paid Rs.7 Lakh to Sh. Guddu. The consignee company i.e. M/s Alumax General & Trading Contacting was arranged by his friend Sh. Buntly of Mumbai. The CHA M/s Sanjay Prabhakar was arranged by Sh. Mehmood alias Guddu. Thus, from the` above, it is evident that plea put forth by the noticee is not sustainable at all.*

*34.6 . In his defence reply dated 28.03.2018, Sh. Sanjay Prabhakar pleaded that no reliance can be placed on the alleged statement of the Noticee which was forcibly extracted from him under duress, threat, coercion and after actual physical torture during prolong illegal custody. He has lodged a complaint before the Court. I observe that the plea put forth by the notice is afterthought to save him from punishment/ penalty provided under the Act ibid and other allied Acts for such offences of smuggling.*

*34.7 Sh. Sanjay Prabhakar in his defence reply as well during the course of personal hearing requested to provide opportunity to cross-examine the seizing officers, the punch witnesses, the officers who have recorded the statements and the co-noticees may kindly be made available for the purpose of cross-examination to prove the*

*innocence of the notice. The request of the party was examined and the same were found frivolous and hence rejected by the competent authority vide letter dated 05.04.2018.*

*34.8 From the discussion made herein above, it is evident that the Sh. Sanjay Prabhakar has failed to transact business in the Customs Station through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; by employing unauthorised person for examination of the export consignment in the instant case. He has failed to advise his client to comply with the provisions of the Act and in the instant case, he has failed to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. He has provided container for stuffing of the prohibited goods at unspecified address even though the exporter in the instant Case was not having any valid permission for self /factory sealing. He has failed to exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. Further, he has 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.*

*In view of the above, I find that Shri Sanjay Prabhakar, Proprietor of Customs Broker Firm M/s Sanjay Prabhakar has failed to fulfill the obligations of Customs Broker as provided in the Customs Broker Licensing Regulations, 2013 as discussed herein above. He has knowingly indulged in facilitating the export of prohibited goods i.e. Gutka, in plastic pouches by providing logistic support viz transport, preparation of export documents, custom clearance etc. in contravention of provision of Section 113 of the Customs*

*Act, 1962 as well as in contravention of Plastic Waste(Management & Handling) Rules 2011. He has provided container for stuffing of the prohibited goods at unspecified address even though the exporter in the instant Case was not having any valid permission for self/ factory sealing Further, Sh. Sanjay Prabhakar has contravened the relevant provisions of the Customs Broker Licensing Regulations, 2013 as he has failed to transact business in the Customs Station through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; by employing unauthorized person for examination of the export consignment in the instant case. He has failed to advise his client to comply with the provisions of the Act and in the instant case, he has failed to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; further he has failed to exercise due diligence to ascertain the correctness of any information which he imparts to his client with reference to any work related to clearance of cargo or baggage. Further, he has 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. Sh. Sanjay Prabhakar, Proprietor of Customs Broker Firm M/s Sanjay Prabhakar has abetted smuggling of prohibited goods. Therefore, I hold that penalty is leviable upon Sh. Sanjay Prabhakar under Section 114 (i) and Section 114AA of the Customs Act, 1962 for the act or omission as above committed by him."*

4.4 From the order in original as well as the impugned order, it is evident that both the authorities have concluded that the appellant have failed to fulfill his obligation as Customs Brokers, in terms of Regulation 11 of the Customs Broker Licensing Regulations, 2013. For his failure to fulfill the obligation penalty

has been imposed upon him under Section 114 (i) and 114AA of the Customs Act, 1962. Custom Broker Licencing Regulations are complete code in itself and provide for penal action upon the Custom Broker for failing to fulfill his obligations under the said regulation. For the alleged failure to comply with the said Regulation 11, penal proceedings could have been initiated under the relevant provisions of the Custom Broker Licencing Regulations, 2013, leading to revocation of the licence of broker along with the penalties as prescribed therein. Section 114 (i) and 114AA cannot be invoked for imposing penalty for non compliance with the said regulations as has been held in case *Fast Cargo Movers* [2018 (362) E.L.T. 184 (Tri. - Del.)] observing as follows:

*"6. Section 114 of the Customs Act, 1962 mandates imposition of penalty, in cases, when any person, who in relation to any goods, does or omits to do any act, which renders the goods liable for confiscation. From the above observations of the adjudicating authority, we find that the charges leveled against the appellants are basically confined to the fact that as the custodian, clearing & forwarding agents, shipping line agents and customs house agents in context with the export of alleged goods, the appellants have grossly neglected their duties and responsibilities cast on them under the Regulations, namely, Handling of Cargo in Customs Area Regulations, 2009 and Customs House Agents Licensing Regulations, 2004. The said regulations provide the procedure for suspension or revocation of license and for imposition of penalty for contravention of the laid down provisions contained therein. In exercise of the powers conferred by the Customs Act, 1962, the CBEC has formulated the said Regulations. When the statute specifically provides for a code of conduct and penalty for infringement thereof, it is not proper and appropriate to bring such violation within the realm or scope of another statutory provision i.e.*

*Section 114 of the Act for punishing the person, by way of imposing penalty, with the allegation of intention to smuggle or attempt to smuggle the goods or abetting such act of smuggling. In other words, anybody can be penalized under Section 114 of the Act, but the authorities are under the statutory obligation to prove that because of the wrong doing, omission or commission on part of such person, the goods became liable for confiscation.*

*7. In the present appeals, it is seen that the allegations against the appellants are mainly concerned with failure to discharge their duties and responsibilities mandated under various Regulations for dealing with goods in legalized manner. Apparently, there is no material evidence available in records to prove that the appellants were either involved in smuggling of the goods, or encouraged and supported the wrong doer in doing the wrongful act in attempting to export the goods. These penal provisions call for prior knowledge of wrong doing or existence of deliberate intend (mala fide). Section 114A of the Act also provides for imposition of penalty for furnishing incorrect or false declarations. Here also such declaration should be intentional with prior knowledge. Thus, as per the settled principles, penal provisions cannot be invoked for imposition of penalties under Sections 114 and 114AA of the Act.*

*8. Reliance on various case laws as submitted by the appellants are appropriate to support the above findings. Some of these decisions are as under :-*

- (a) Sanco Trans Ltd. - 2017-TIOL-757-HC Mad. Cus. = 2017 (350) E.L.T. 521 (Mad.).*
- (b) Sarosh Nagarwala & Others. - 2017-TIOL 233 CESTAT-Mum. = 2017 (358) E.L.T. 542 (Tribunal).*
- (c) Skyline Shipping & Logistics. - 2010 (262) E.L.T. 985 (Tri.-Chen.)*

- (d) *Maheshwari Rocks (I) Pvt. Ltd. - 2010 (262) E.L.T. 574 (Tri.-Chen.)*
- (e) *Sekar & Sekar Process. - 2010 (262) E.L.T. 385 (Tri.-Chen.)*
- (f) *Kiran S. Dixit. - 2014 (301) E.L.T. 337 (Tri.-Bang.)*

4.5 The facts stated by the appellant in his statement have been corroborated by the statements of other co-noticees. Cross examination as sought by the appellant was also denied by the original authority. However, as is evident from para 34.7 of the order in original, the said request was denied by the competent authority vide letter dated 05.04.2018. The appellant has not challenged the said denial of the cross examination much before the adjudication was done before any authority. Hence it would not be justified to reopen the issue at this stage. In case of Naresh J Sukhwani [1996 (83) E.L.T. 258 (S.C.)] Hon'ble Supreme Court held as follow:

**"3.** *The Joint Secretary to the Government, the revisional authority, has held that the evidence and the statement given by Mr. Dudani incriminates the petitioner. This was established with reference to the photographs and other intrinsic material. On that basis, he concluded that Mr. Dudani incriminated himself and the appellant in passing off foreign currency out of India, i.e., to Hong Kong. It was accordingly held that the contravention was established. It is contended that the statement of co-accused could be used only to corroborate other evidence as one of the circumstances under Section 30 of the Evidence Act. But it cannot be used as substantive evidence without corroboration from other independent evidence. Except the statement of Dudani, there is no other independent evidence. Mr. Dudani's evidence cannot be pressed into service to arrive at the conclusion that the petitioner is involved in the passing off foreign currency out of India.*

**4.** *It must be remembered that the statement made before the Customs officials is not a statement recorded under*

*Section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."*

4.6 However I find that appellant has not acted completely clean in the case of attempted export of this consignment certain facts were admitted by him in his statement though retracted later on, at the first available opportunity. In case of K I Pavunny [1997 (90) E.L.T. 241 (S.C.)] Hon'ble Supreme Court has observed as follows:

**20.** *The question then is : whether the retracted confessional statement requires corroboration from any other independent evidence? It is seen that the evidence in this case consists of the confessional statement, the recovery panchnama and the testimony of PWs 2, 3 and 5. It is true that in a trial and proprio vigore in a criminal trial, Courts are required to marshal the evidence. It is the duty of the prosecution to prove the case beyond reasonable doubt. The evidence may consist of direct evidence, confession or circumstantial evidence. In a criminal trial punishable under the provisions of the IPC, it is now well settled legal position that confession can form the sole basis for conviction. If it is retracted, it must first be tested*

*whether confession is voluntary and truthful inculcating the accused in the commission of the crime. Confession is one of the species of admission dealt with under Sections 24 to 30 of the Evidence Act and Section 164 of the Code. It is an admission against the maker of it, unless its admissibility is excluded by some of those provisions. If a confession is proved by unimpeachable evidence and if it is of voluntary nature, it when retracted, is entitled to high degree of value as its maker is likely to face the consequences of confession by a statement affecting his life, liberty or property. Burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in Bhagwan Singh v. State of Punjab - AIR 1952 SC 214, Para 30. If it is established from the record or circumstances that the confession is shrouded with suspicious features, then it falls in the realm of doubt. The burden of proof on the accused is not as high as on the prosecution. If the accused is able to prove the facts creating reasonable doubt that the confession was not voluntary or it was obtained by threat, coercion or inducement etc., the burden would be on the prosecution to prove that the confession was made by the accused voluntarily. If the Court believes that the confession was voluntary and believes it to be true, then there is no legal bar on the Court for ordering conviction. However, rule of prudence and practice does require that the Court seeks corroboration of the retracted confession from other evidence. The confession must be one inculcating the accused in the crime. It is not necessary that each fact or circumstance contained in the confession is separately or independently corroborated. It is enough*

*if it receives general corroboration. The burden is not as high as in the case of an approver or an accomplice in which case corroboration is required on material particulars of the prosecution case. Each case would, therefore, require to be examined in the light of the facts and circumstances in which the confession came to be made and whether or not it was voluntary and true. These require to be tested in the light of given set of facts. The high degree of proof and probative value is insisted in capital offences.*

**25.** *It would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. The practice and prudence require that the Court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The Court is required to examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base conviction. However, the prudence and practice require that Court would seek assurance getting corroboration from other evidence adduced by the prosecution.*

26. *In Naresh J. Sukhawani v. Union of India - 1996 (83) E.L.T. 258 (S.C.) = 1995 Supp. 4 SCC 663 a two-Judge Bench [to which one of us, K. Ramaswamy, J., was a member] had held in para 4 that the statement recorded under Section 108 of the Act forms a substantive evidence inculcating the petitioner therein with the contravention of the provisions of the Customs Act as he had attempted to export foreign exchange out of India. The statement made by another person inculcating the petitioner therein could be used against him as substantive evidence. Of course, the proceedings therein were for confiscation of the contraband. In Surjeet Singh Chhabra v. Union of India - 1997 (89) E.L.T. 646, decided by a two-Judge Bench to which one of us, K. Ramaswamy, J., was a member the petitioner made a confession under Section 108. The proceedings on the basis thereof were taken for confiscation of the goods. He filed a writ petition to summon the panch (mediator) witnesses for cross-examination contending that reliance on the statements of those witnesses without opportunity to cross-examine them, was violative of the principle of natural justice. The High Court had dismissed the writ petition. In that context, it was held that his retracted confession within six days from the date of the confession was not before a Police Officer. The Custom Officers are not police officers. Therefore, it was held that "the confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner". As noted, the object of the Act is to prevent large-scale smuggling of precious metals and other dutiable goods and to facilitate detection and confiscation of smuggled goods into, or out of the country. The contraventions and offences under the Act are committed in an organised manner under absolute secrecy. They are white-collar crimes upsetting the economy of the country. Detection and confiscation of the smuggled goods are aimed to check the escapement and avoidance of*

*customs duty and to prevent perpetration thereof. In an appropriate case when the authority thought it expedient to have the contraveners prosecuted under Section 135 etc., separate procedure of filing a complaint has been provided under the Act. By necessary implication, resort to the investigation under Chapter XII of the Code stands excluded unless during the course of the same transaction, the offences punishable under the IPC, like Section 120B etc., are involved. Generally, the evidence in support of the violation of the provisions of the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of recovery and in connection therewith. This Court, therefore, in evaluating the evidence for proof of the offences committed under the Act has consistently been adopting the consideration in the light of the object which the Act seeks to achieve."*

4.7 From the evidences as adduced in the orders of lower authority it is evident that appellant has in manner abetted in clearance of undeclared/ mis-declared goods for export. For that penalty is imposable under Section 114 (i) of the Customs Act, 1962 without establishing an element of mens-rea. However taking note of the fact that commissioner (Appeal) has vide two order referred by the appellant, dropped the proceedings against the two departmental officers, holding their acts of omission and commission as act of innocent negligence I find the penalty imposed on the appellant as excessive and reduce the same to Rs 10,00,000/-.

4.8 I do not find any reason for invocation of Section 114AA, for the reason that the appellant had filed the shipping bills as per the documents provided to him be the exporters in the case. He himself was not responsible for forging any documents for the clearance of the said goods for export. Section 114AA is very specific in nature and needs to be invoked only in case where the ingredients as specified therein are present. In absence of such

ingredients invocation of said section against the appellant cannot be justified and hence the penalty imposed under Section 114AA is set aside.

4.9 Summarizing, penalty impose under Section 114 (i) is reduced to Rs.10,00,000/- and penalty imposed under Section 114AA is set aside.

5.1 Appeal partly allowed as indicated in para 4.9 above.

(Order pronounced in open court on-12 December, 2024)

**Sd/-  
(SANJIV SRIVASTAVA)  
MEMBER (TECHNICAL)**

*akp*