CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70115 of 2021

(Arising out of Order-in-Original No.11/Pr.Commr./Noida-Cus/2020-21 dated 12/10/2020 passed by Commissioner of Customs, Noida)

Commissioner of Customs, Noida **.....Appellant**
(Concor Complex, P.O., Container Depot, Noida-201311)

VERSUS

M/s Titra Trading Pvt. Ltd., **....Respondent**
(Survey No.236/1 & 237,
Warehouse No.K05 & 06 (B)
Mithi Roha, Gandhi Dham, Kutch-370201)

APPEARANCE:

Shri Manish Raj, Authorised Representative for the Appellant
None for the Respondent

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

FINAL ORDER NO.70087/2025

DATE OF HEARING : 24 February, 2025
DATE OF DECISION : 24 February, 2025

SANJIV SRIVASTAVA:

This appeal is directed by revenue against Order-in-Original No.11/Pr.Commr./Noida-Cus/2020-21 dated 12/10/2020 passed by Commissioner of Customs, Noida. By the impugned order following has been held:-

"ORDER

i) I order to recover Duty of Customs amounting to Rs. 3,68,86,757/-(Rupees Three Crore Sixty Eight Lakh Eighty Six Thousand Seven Hundred Fifty Seven Only) from M/s M/s Titra Trading Pvt. Ltd., Survey No.236/1 & 237, Warehouse No.K05 & 06 (B) Mithi Roha, Gandhi Dham, Kutch-370201 under Sub Section (4) of Section 28 of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

ii) I impose penalty of Rs. 3,68,86,757/-(Rupees Three Crore Sixty Eight Lakh Eighty Six Thousand Seven Hundred Fifty Seven Only) from M/s M/s Titra Trading Pvt. Ltd., Survey No.236/1 & 237, Warehouse No.K05 & 06 (B) Mithi Roha, Gandhi Dham, Kutch-370201 under Section 114A of the Customs Act, 1962."

2.1 Respondent has filed self assessment of Bill of Entries at ICD Dadri, Greater Noida for clearance of imported 'Tin Ingots' classifiable under Customs Tariff Heading (CTH) 80011090 from Malaysia manufactured by M/s Malaysia Smelting Corporation, Malaysia. The imported goods attract BCD @ 5% and CVD @ 12.5%.

2.2 Respondent self assessed duty under the provisions of Section 17 (1) of Customs Act and claimed benefit of free trade agreement under Notification No.046/2011-Cus dated 01.06.2011. Accordingly, NIL BCD was paid because of the said notification.

2.3 After certain inquiries made by the DRI, it was found that the benefit of Notification No. 046/2011-Cus dated 01.06.2011 was not admissible to the respondent and this resulted in short payment of duty to the tune of Rs.3,68,86,757/-.

2.4 Show cause notice dated 18.10.2018 was issued to the respondent asking them to show cause as to why-

"i) the duty of Customs amounting to Rs.3,68,86,757/- should not be demanded from them under Sub Section (4) of Section 28 of the Customs Act, 1962.

ii) Interest as applicable on the amount mentioned at i) above should not be demanded from them under Section 28AA of the Customs Act, 1962.

iii) penalty equal to the amount of the duty of customs mentioned at Si No. i) above should not be demanded from them under the provisions of Section 114A of the Customs Act, 1962."

2.5 The said show cause notice was adjudicated as per the impugned Order-in-Original referred in para 1 above.

2.6 Aggrieved revenue have filed this appeal.

3.1 We have heard Shri A.K. Choudhary, Authorised Representative for the revenue. Respondent is absent on call.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 The issue raised by the revenue in the present appeal is vis a vis the interpretation of Section 114A of the Customs Act, 1962. Revenue has on the basis of a Circular of 2002, contended that the amount of penalty under this section should be equal to the sum of custom duty and interest on this duty. We find that the issue in the present appeal is squarely covered by the decision of this Tribunal in the case of M/s Khanna Traders & Engineers Customs Appeal No.70479 of 2020 dated 27 November, 2024.

4.3 We do not find any merits in the appeal filed by the revenue to the extent that interest amount should have been added to the duty short paid while imposition of penalty under Section 114A of the Act. Tribunal and even High Court has repeatedly emphasized that the word used in the section is "or" and not "and". In case of Sony sales Corporation [2021 (376) ELT 472 (Kar)] Hon'ble Karnataka high Court has held as follows:

> *10. We have considered the submissions made on both sides and have perused the record. The solitary issue, which arises for consideration in this appeal is with regard to interpretation of provisions of Section 114A of the Act. Before proceeding further, we may take note of the well settled legal principles with regard to the principles of statutory interpretation, which is reproduced below for the facility of reference.*
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> *The word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by SCRUTTON L.J. : "You do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'.*

And as pointed out by Lord Halsbury the reading of 'or'; as 'and' is not to be restored to, "unless some other part of the same statute or the clear intention of it required that to be done. Where provision is clear and unambiguous the word 'or' cannot be read as 'and' by applying the principle of reading down.

"……..speaking generally, a distinction may be made between positive and negative conditions prescribed by a statute for acquiring a right or benefit. Positive conditions separated by 'or' and read in the alternative but negative conditions connected by 'or' are construed as cumulative and 'or' is read as 'nor' or 'and'. [See : Principles of Statutory Interpretation by Justice G.P. Singh, 14th Edition.]

11. In the backdrop of aforesaid well settled legal principles with regard to statutory interpretation we may notice relevant extract of Section 114A of the Act, which reads as under :

> *114A. Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:*

12. The aforesaid rule of statutory interpretation was referred to by Constitution Bench of the Supreme Court in Indore Development Authority v. Manohar Lal and Others, AIR 2020 SC 1496. From perusal of the relevant extract of Section 114A, it is evident that the language employed by the Legislature is plain and unambiguous and the provision contains a positive condition with regard to levy of penalty equal to duty or interest and does not contain any negative *condition. The expression used is 'or' which is disjunctive between duty or interest and further use of expression as the case may be clearly suggest that aforesaid provision refers to two different persons and two different situations viz., one in which a person will be liable to duty and in other he may be liable to pay interest only and provides that in both the situations the person liable to duty would be liable to penalty equal to duty and person liable to interest would be liable to penalty equal to interest. Therefore, in view of law laid down by Constitution Bench of Supreme Court, the word 'or' cannot be interpreted as 'and'.*

13. So far as reliance placed by Learned Counsel for the appellant on the clarification issued by Central Board of Excise and Customs dated 20-9-2002 is concerned, suffice it to say that the aforesaid clarification cannot be contrary to the plain language of the provision. For yet another reason, no interference is called for as the Tribunal has taken a similar view in the case of B. Suresh Vasudev Baliga (supra) and there is no material on record to show that the aforesaid order was challenged by the Revenue. Therefore, in the facts of the case, the view taken by the Tribunal otherwise also binds the Revenue.

4.4 In view of the above, we do not find any merits in the appeal filed by the revenue..

5.1 Appeal filed by the revenue is dismissed.

(Dictated and pronounced in open court)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

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