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

REGIONAL BENCH - COURT NO.I

**Customs Appeal No.70562 of 2020**
(Arising out of Order-In-Original No.08-PRCOMMR-NOIDA-CUS-2020-21, dated-28/08/2020 passed by Principal Commissioner, Customs, Noida)

**Commissioner, Customs, Noida** .....**Appellant**
(Concor Bhawan, P.O. Concor Depot,
Greater Noida, Gautam Budh Nagar)

*VERSUS*

**M/s Vikas Globalone Ltd.,** ....**Respondent**
(Apartment, 34/1, East Punjabi Bagh, New Delhi)

**APPEARANCE:**

Shri Santosh Kumar, Authorized Representative for the Appellant
Absent for the Respondent

**CORAM:** **HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.-70150/2025**

DATE OF HEARING : 12.03.2025
DATE OF DECISION : 12.03.2025

**BINU TAMTA:**

The Revenue is in appeal against the Order-In-Original No.08-PRCOMMR-NOIDA-CUS-2020-21 dated 28.08.2020 as the Adjudicating Authority had imposed the penalty under section 114A of the Customs Act, 1962 equivalent to the duty payable without including the penalty on the interest.

2. Briefly stated, the Appellant imported tin ingots from Malaysia manufactured by M/s. Malaysia Smelting Corporation (MSC), Malaysia. The importer self assessed the duty under the provisions of section 17(1) of the Act and claimed the benefit of Free Trade Agreement (FTA) under Notification No. 46/2011 dated 01.06.2011 and accordingly cleared the goods at 'Nil' basic Customs duty. The DRI, MZU, Mumbai visited the unit of MSC to examine the extent and nature of value addition at the melting factory and also to ascertain whether the imported Tin ingots when exported from Malaysia fulfilled 'Country of Origin' criteria under FTA in terms of paragraph 17 of an Annexure III to the

Rules of Origin (Notification No. 189/2009 – CUS(NT) dated 31.12.2009) and on the basis of the verification report Show Cause Notice dated 06.12.2018 was issued denying the benefit of notifications and demanding duty amounting to ₹1,90,66,956/- along with interest under section 28AA and penalty under section 114A of the Act.

3. On merits, the Adjudicating Authority held that the importer was not eligible to claim the benefit of preferential duty of customs under the notifications and was, therefore, required to pay the effective rate of customs duty at the rate of 5% as against the preferential rate of 0% along with interest thereon. He accordingly ordered for recovery of customs duty amounting to ₹1,90,66,956/- under Section 28(4) of the Act along with interest and imposed penalty of equivalent amount of duty under Section 114A. Being aggrieved with the non-imposition of penalty on the interest amount, the Revenue has filed the present appeal before this Tribunal.

4. Heard Shri Santosh Kumar, learned Authorized Representative for the Revenue and perused the records of the case. None has appeared on behalf of the Respondent despite service of notice and opportunities granted for personal hearing.

5. The Revenue has relied on the CBEC Circular No. 61/2002–CUS dated 20.09.2002 clarifying that penalty under Section 114A of the Act should be equivalent to duty and interest both and therefore, the Adjudicating Authority has erred in not imposing penalty on the interest amount also. We do not agree with the submissions of the Revenue in view of the decision of the Karnataka High Court in **Sony Sales Corporation 2021(376) ELT 472(Kar.)** interpreting the provisions of Section 114A to say that the expression used is "or" and not "and" which is not interchangeable. The observations of the Court are quoted below:-

> *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."*

6. The principle of law settled by the Hon'ble Karnataka High Court and subsequently followed by the Tribunal in the case of **Commissioner of Customs, Noida *Versus* M/s Titra Trading Pvt. Ltd Final Order No. 70087/2025 dated 24.03.2025** is clearly applicable to the facts of the present case and hence we do not find any infirmity in the impugned order and the same is hereby affirmed. The appeal filed by the Revenue is, accordingly dismissed.

(Operative part of the order is pronounced in open court)

**Sd/-**

**(BINU TAMTA)**
**MEMBER (JUDICIAL)**

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

*Nihal*