

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

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70564 of 2020

(Arising out of Order-In-Appeal No.NOI-CUSTM-000-APP-209-20-21, dated - 15/06/2020 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Nischay Gupta,

.....Appellant

(Proprietor of M/s Radha Enterprises
7103/2 Gali Pahar Wali,
Ahata Kidara, Pahari Dhiraj, New Delhi 110006)

VERSUS

Commissioner, Customs, Noida

....Respondent

(P.O. Container Depot, Greater Noida, U.P.201306)

APPEARANCE:

Shri Ashish Bhatt, Advocate for the Appellant

Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70841/2025

DATE OF HEARING : 15.10.2025
DATE OF DECISION : 15.10.2025

SANJIV SRIVASTAVA:

This appeal is directed against the Order-In-Appeal No.NOI-CUSTM-000-APP-209-20-21, dated 15.06.2020 passed by Commissioner (Appeals) CGST & Central Excise, Noida. By the impugned order Commissioner (Appeals) has upheld the Order-In-Original No.68/ADC/ICD-DD/Cus/2018 dated 20.11.2018.

1.2 By the Order-In-Original dated 20.11.2018 following was held:-

ORDER

1) I order rejection of the declared value of the imported goods amounting to Rs. 19,49,417/- covered under Bill of Entry No. 6955830 dated 26.06.2018 under Rule 12 of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 and order to re-determine the value there of as Rs. 33,79,815/- as mentioned in Table-C under Rule 7 *ibid*.

2) I confirm the differential Customs duty amounting to Rs.5,82,369/- in addition to duty amounting to Rs. 3,76,612/- already paid on goods as per Bill of Entry No. 6955830 dated 26.06.2018 on the re-determined assessable value of Rs. 33,79,815/- covered under said Bill of Entry under Section 17(4) of the Customs Act 1962.

3) I order to confiscate goods valued at Rs. 33,79,815/- covered under Bill of Entry No. 6955830 dated 26.06.2018 under the provisions of Section 111(m) read with Section 118 of the Customs Act' 1962. However, I give an option to the importer to redeem the goods on payment of Redemption Fine of Rs. 5,00,000/- (Five Lakhs) under Section 125 (1) of the Customs Act, 1962

4) I impose penalty of Rs. 45,000/- (Forty Five Thousand only) upon Shri Nischay Gupta, Proprietor of M/s Radha Enterprises, under the provisions of Section 112(a) of Customs Act 1962,

5) I impose penalty of Rs.3,00,000/(Three Lakhs) upon Shri Nischay Gupta, Proprietor of M/s Radha Enterprises, under Section 114 AA the Customs Act, 1962.

2.1 The Appellant holding IEC No.0517535386 filed Bill of Entry No.6955830 dated 26.06.2018 for import of variety of goods valued at Rs.19,49,415/- classified under various CTH as detailed in the table below:-

Table A			
S No	Description	CTH	Declared Value
1	Bed Spread (200*230CM)	63041990	10020
2	Bed Spread (215*235CM)	63041990	385578
3	Bed Spread (150*210CM)	63041990	243232
4	PVC Hand Shower	39229000	57215
5	PVC Shower	39229000	22803
6	My Clear Bag	42022290	294090
7	Men Gloves	61169990	159103
8	Baby Gloves	61169990	110215
9	Legging	61046990	76010
10	Women Socks (16.9grm P.Pair)	61159990	146838
11	Baby Socks (12 gm" Pair)	61159990	76010
12	Men Socks (49.2gm P.Pair)	61159990	172750
13	Baby Socks (23.3 gm P. Pair)	61159990	41460
14	Baby Socks (27.3 gm P. Pair)	61159990	45606
15	Baby Socks (35 gm P. Pair)	61159990	60117
16	Women Socks (8 gm P.Pair)	61159990	48370
	Total		1949415

2.2 The imported goods were 100% examined by the SIIB at ICD Dadri and were found to be mis-declared in terms of description, classification and value. After conducting market inquiries correct classification and value of the goods was ascertained as under:-

Table B						
S No	CTH Reassessed	Description	Value		Custom Duty	
			Declared	Determined	Rate*	Payable
1	94049019	Bed Spread (200*230CM)	10020	15242	43.96	6700
2	94049019	Bed Spread (215*235CM)	385578	580740	43.96	255293
3	94049019	Bed Spread (150*210CM)	243232	374760	43.96	164744
4	39229000	PVC Hand Shower	57215	235100	30.98	72834
5	39229000	PVC Shower	22803	86128	30.98	26682
6	42022290	My Clear Bag	294090	604218	30.98	187187
7	61169990	Men Gloves	159103	306944	16.55	50799
8	61169990	Baby Gloves	110215	207693	16.55	34373
9	61046990	Legging	76010	124800	16.55	20654
10	61159990	Women Socks	146838	207870	16.55	34402

		(16.9grm P.Pair)				
11	61159990	Baby Socks (12 gm" Pair)	76010	118080	16.55	19542
12	61159990	Men Socks (49.2gm P.Pair)	172750	242064	16.55	40062
13	61159990	Baby Socks (23.3 gm P. Pair)	41460	57318	16.55	9486
14	61159990	Baby Socks (27.3 gm P. Pair)	45606	67158	16.55	11115
15	61159990	Baby Socks (35 gm P. Pair)	60117	86100	16.55	14250
16	61159990	Women Socks (8 gm P.Pair)	48370	65600	16.55	10857
	Total		1949415	3379815		958981
* BCD+SWS+IGST						

2.3 On the basis of the above it was alleged that the Appellant has mis-declared the classification of the Bed Spread and the value of all the goods in the self assessed Bill of Entry No. 6955830 dated 26.06.2018, Imported goods were seized as per Seizure Memo dated 21.08.2018.

2.4 Statement of Shri Nischay Gupta, Proprietor of M/s Radha Enterprises was recorded wherein he stated that:-

- a) He had placed order of the goods imported on oral basis to the foreign supplier.
- b) He could not confirm the specifications, description, quantity and value of goods and have not kept any record regarding this.
- c) Market enquiry was done by the SIIB in his presence and he was in total agreement with the values determined as per the market inquiry.
- d) As no data was available for identical/ similar goods market inquiry was initiated.
- e) He accepted the revised assessable values given by the Directorate General of Valuation.
- f) He was in total agreement with the examination report dated 29.06.2018 and also agreed that the Bed spread, should have been classified in CTH 94049019.

- g) He was ready to pay differential duty worked out in the duty chart, which he had signed in for acceptance of his duty liability and was willing to pay any penalty and fine that may be imposed on the present import consignment.
- h) This being his first mistake requested for lenient view.
- i) Further he requested to finalize his case without issuance of any Show Cause Notice and personal hearing.

2.5 The Show Cause Notice dated 13.09.2018 was issued to the Appellant asking them to show cause as to why:-

"(1) The declared value of the imported goods amounting to Rs. 19,49,417/-covered under Bill of Entry No. 6955830 dated 26.06.2018 should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the transaction value should not be re-determined as Rs. 33,79,815/- under Rule 7 ibid.

(2) Differential Customs duty amounting to Rs.5,82,369/ in addition to duty amounting to Rs.3,76,612/- already paid on goods as per Bill of Entry No. 6955830 dated 26.06.2018 on the re-determined assessable value of Rs. 33,79,815/- covered under said Bill of Entry should not be demanded from them under Section 17(5) of the Customs Act 1962.

(3) Goods valued at Rs. 33,79,815/- covered under Bill of Entry No. 6955830 dated 26.06.2018 should not be confiscated under the provisions of Section 111(m) read with Section 118 of the Customs Act' 1962.

(4) Penalty should not be imposed upon Shri Nischay Gupta, Proprieten of M/s Radha Enterprises, 7103/2 Gali Pahar Wali, AHATA Kidara, Delhi-110006, under the provisions of Section 112(a) of Customs Act'1962, and

(5) Penalty should not be imposed upon Shri Nischay Gupta, Proprietor of M/s Radha Enterprises, 7103/2 Gali Pahar Wali, AHATA Kidara, Delhi-110006, under Section 114 AA the Customs Act, 1962."

2.6 The Show Cause Notice have been adjudicated as per the Order-In-Original referred in Para 1.2 above.

2.7 Aggrieved Appellant filed the appeal before the Commissioner (Appeals) which has been dismissed as per the impugned order.

2.8 Hence the present appeal.

3.1 We have heard Shri Ashish Bhatt, Advocate for the Appellant and Shri Santosh Kumar, Authorized Representative for the Revenue and have perused the appeal records.

3.2 Arguing for the Appellant learned Counsel submits as follows:-

- a) The Appellant classified the goods as per the order placed on them and as per import invoices received from the foreign supplier. They had no role in the alleged misclassification of the goods. In this regard reliance is placed upon the decision in following cases:-
 - i. Kirti Sales Corpn. [2008 (232) ELT 151]
 - ii. Vaibhav Textiles [2007 (214) ELT 408]
- b) Reliance placed on the DGVO Circular cannot be a ground for unnecessary value as have been held in the following decisions:-
 - i. South India Television (P) Ltd. [2007 (214) ELT 3 (SC)]
 - ii. Crystal Dot Scan Pvt. Ltd. [2011 (263) ELT 401 (T-Mum)]
 - iii. Coats Viyella India Ltd. [2001 (133) ELT 373 (Tri.)]
 - iv. PSM Spinning Mills [2002 (146) ELT 559 (T-Chen)]
- c) The Appellant is a small time entrepreneur and only to avoid incidental cost he has given the statement accepting the value is on the lower side as the Appellant has incurred huge demurrage. The Tribunal may consider while deciding the quantum of redemption fine and penalty. Reliance is placed on decision in the case of Handtex [2008 (226) ELT 665].

3.3 The learned Authorized Representative for the Revenue reiterates the findings recorded in the impugned order.

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

4.2 The impugned order records as follows:-

"5.1 From the facts of the case, I observe that imported goods covered under Bills of Entry No. 6955830 dated 26.06.2018 were 100% examined by the Special Investigation and Intelligence Branch (SIIB) at ICD, Dadri. The said Bills of Entry was filed by the appellant for import of variety of goods valued at Rs. 19,40,415/- classified under various CTH at CMA CGM Logistic Park Pvt. Ltd Dadri. During examination, it was detected that the goods declared as Bed Spread under Tariff item no. 63041990 were quilted and were to be classified under CTH 94049019 instead of 63041990. Further, it was found that the price of all imported goods was considerably low when compared to contemporaneous value of the imported goods. SIIB conducted an enquiry to determine the correct import value of the said goods, after proper drawl of samples from the imported consignment on the wholesaler shops in the presence of Shri Nischaya Gupta. The proprietor of wholesale shops provided the copy of sale invoice of the identical/similar goods on the basis of which the correct valuation of the goods was arrived at. The valuation of the socks was done on the basis of alerts of Directorate of General Valuation on socks. Accordingly, the duty was re-calculated and chart was prepared which was also signed, being in agreement, by Shri Nischaya Gupta. Since the importer mis-declared the classification of 'Bed Spread' and value of all the goods in its self-assessed Bills of Entry No. 6955830 dated 26.06.2018, hence the said imported goods were seized by the officers of SIIB vide seizure memo dated 21.08.2018.

5.2 I further find that Shri Nischay Gupta, Proprietor of M/s Radha Enterprises admitted in his statement that he had placed order of the goods imported vide Bill of Entry No. 6955830 dated 26.06.2018 on oral basis to foreign supplier. He could not confirm the specifications, description, quantity and value of goods and had not kept any record regarding this. Shri Gupta further confirmed that market enquiry was done in his presence and he was in total agreement with the values tabulated in the valuation chart (RUD-5) of Show Cause Notice. He also confirmed that market enquiries were necessitated in the absence of any data available for identical/ similar goods. He further accepted the revised assessable values derived on that basis of market enquiry and alert on socks given by the Directorate General of Valuation. Further, he perused and agreed with the examination report dated 29.06.2018. He also agreed that the Bed spread, being quilted, should have been classified in CTH 94049019. He had stated that it got mis-classified due to erroneous impression on his part about its classification. He, however, was in complete agreement that Bed Spread merits classification CTH 94049019. He also agreed that all the goods were undervalued. He further carefully perused the duty chart prepared on the basis of market enquiries and on the basis of Directorate General of Valuation alerts and he accepted them in toto without any hesitation. He further stated that he was ready to pay differential duty worked out in the duty chart, which he had signed in acceptance of his duty liability and was willing to pay differential duty along with any penalty and fine that may be levied on his present import consignment.

5.3 In view of the above, it is very much obvious that the declared value of the imported goods did not represent the true and correct transaction value under the provisions of Rule-3 of CVR, 2007, hence was rejected under rule 12 of CVR, 2007 and re-determined in accordance with the provisions of rule 7 of CVR, 2007. The case is very simple as

all the allegations have been accepted by Shri Nischay Gupta, Proprietor, and all the liabilities of the case has been discharged by him.

5.4 In the light of the findings & discussion I am of the view that this case clearly falls under the category of mis-declaration and undervaluation. The adjudicating authority has rightly confirmed the demand along with penalty.”

4.3 In the present case we find that the claim of the Appellant that mis-declaration and misclassification have happened for the reason that the order placed are oral orders on the foreign suppliers and have got no details in respect of the order placed. Further, he had filed the Bills of Entry on the basis of the invoices received. These submissions do not merit any acceptance for the simple reason that the case is of importation of goods and is in case of international trade. The importation of the goods in course of international trade would definitely involve following steps:

- Trade inquiry from potential suppliers to get information on pricing, quality, and terms.
- Once the terms are settled, a purchase order is placed on the supplier.
- A Letter of credit is opened and sent through the bank to the supplier to guarantee payment.
- The supplier will send shipping documents to your bank, which may include a commercial invoice, bill of lading, and packing list.

Thus we do not find any merits in the submissions of the appellant that he had placed an oral order on the foreign supplier and what so ever mis-declaration has happened has happened at the suppliers end.

4.4 We also note that the Appellant have accepted the case of mis-declaration and undervaluation categorically in his statement recorded under Section 108 of the Customs Act, on 07.08.2018. Relevant excerpts are reproduced below:

Question 3: Please elaborate the work handled by you in M/s Radha Enterprises.

Answer: I look after all the work of my firm.

Question 4: How did you place your order for present consignment imported vide Bill of Entry No. 6955830 dated 26.06.2018:

Answer: I had placed order on oral basis to my foreign supplier. I, however, cannot recount and confirm the quantity and value of goods ordered by me to my supplier.

Question 5: Could you confirm the specifications, description, quantity and value of goods ordered by you to your foreign supplier?

Answer : No, I cannot confirm the above details since I do not remember them now, nor have I kept any record for the same anywhere which I could produce before you later. We basically import Bed Spread, Sock, Gloves, PVC Showers, Legging, My Clear bag, Towel and Cap.

Question 6 Please peruse and confirm whether the Bill of Entry No. 6955830 dated 26.06.20 18 filed by you at CMA-CGM Port ICD Dadri for the import of Bed Spread, Sock, Gloves, PVC Showers, Legging, My Clear bag etc in various sizes.

Answer : Yes, Bill of Entry No. 6955830 dated 26.06.2018 was filed by my CHA Shri Vijay Sinha, on behalf of my firm at CMA-CGM Port ICD Dadri and I also confirm that goods on examination were found as recorded in the Examination Report dated 29.06.2018. Further I volunteer to add the account details of my firm as under:

*Bank Name - Axis Bank, Account No. 91420009424753
IFSC Codc - UTIB0001150.*

Question 7: The goods found on examination were found to be highly undervalued when compared with their declared values and therefore mkt. Enquiry in association was done to ascertain their true import price. The details

of market enquiry are being shown to you now, please give your detailed explanation in this regard

Answer : 1 hereby confirm that market enquiry was done in my presence and I am in total agreement with the values tabulated in the valuation chart and have put my dated signature in today's day in token of my acceptance of that without any reservation. I also confirm that market enquiries were necessitated in the absence of any data available for identical/ similar goods. I unreservedly accept the market enquiry findings and revised assessable values derived on that basis and on the basis of alerts of directorate of valuation on socks.

Question 8: Please peruse the examination report dated 29.06.2018 of the examination of Container conducted by SIIB officers in presence of your CHA. Do you agree with the examination report that the goods i.e. Bed Spread, which were quilted and should be classified in CTH 94049019. Do you also agree that all the goods are undervalued?

Answer: Yes I have perused and agree with the examination report dated 29.06.2018. I also agree that the Bed spread, being quilted, should be classified in CTH 94049019. It got mis-classified due to erroneous impression on my part about its classification. I, however, am in complete agreement that Bed Spread merits classification as aforementioned by me.

Question 9: Please also peruse the duty chart derived on the basis of market enquiries and on the basis of values given for the socks in the alerts given by Directorate General of Valuations. Please give your detailed explanation on the same.

Answer: I have carefully perused the duty chart shown to me prepared on the basis of market enquiries and on the basis of directorate of valuation alerts and I accept them in toto without any hesitation. I submit that I am prepared to

pay differential duty worked out in the duty chart, which I have signed in today's date in acceptance of my duty liability and am willing to pay any penalty and fine that may be levied on my present import consignment.

4.5 We find that the appellant has in his statement admitted that the Bed Spreads in the Bill of Entry were mis-classified. He also admitted that bed spreads and other goods imported under the said bill of entry were undervalued. He agreed with the value determined. In view of the specific admission made by the appellant in respect of mis-classification and undervaluation we do not find any merits in the reliance placed by the appellant on various decisions in this respect. The Hon'ble Supreme Court in the case of Systems & Components Pvt. Ltd. reported at 2004 (165) E.L.T. 136 (S.C.) has held as under:-

"5. The Appeal filed by the Department has been disposed of by the Tribunal by holding that the Department has not proved that these parts were specifically designed for manufacture of Water Chilling Plant in question. The Tribunal has noted the Technical details supplied by the Respondents and the letter of the Respondents dated 30th November, 1993 giving details of how these parts are used in the Chilling Plant. The Tribunal has still strangely held that this by itself is not sufficient to show that they are specifically designed for the purpose of assembling the Chilling Plant. We are unable to understand this reasoning. Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved."

4.6 This decision was relied upon by the Delhi Bench in the case of Sodagar Knitwears [2018 (362) E.L.T. 819 (Tri. - Del.)] which has been affirmed by the Hon'ble Apex Court as reported at [2018 (362) E.L.T. A213 (S.C.)]. Delhi bench observed as follow:

8. *The second issue in the present appeal is regarding the value of the imported goods. The Customs Authorities redetermined the value of the imported goods in terms of Customs Valuation Rules, 2007. Since the importer had failed to advance any documents/invoice to substantiate the value of the goods, the transaction value stands rejected and the value of the goods have been redetermined as per Rule 7 of the Customs Valuation Rules, 2007. It is noteworthy that the representative of the importer has been specifically shown the basis for redetermination of the value and his statement recorded by the Customs Officers. It is on record that Sh. Eklovey Chug, Manager of the importer has specifically admitted in his statement dated 31-12-2016 that he agreed with the manner of calculating the assessable value and differential duty.*

9. *It is settled position of law that the facts which are admitted need not be proved. In the case of CCE, Madras v. Systems & Components Pvt. Ltd. - 2004 (165) E.L.T. 136 (S.C.), the Hon'ble Apex Court in para 5 of the order has observed as follows :*

"... .. Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use, there is no need for the department to prove the same. It is a basic and settled law what is admitted need not be proved".

10. *Further, this Tribunal in the case of Jai Shiv Trading Company vide F. O., dated 20-7-2017 has observed as follows :*

"The appellant has also challenged that valuation adopted by the customs authorities. From record, it is seen that such redetermination of value has been carried out in terms of Rule 7 of the Customs Valuation Rules which provides for determination of

value on the basis of the price of identical or similar imported goods in India. It is further seen from records, that the proprietor of the appellant, Sh. Jayshiv, was shown the market enquiry report at the time of recording his statement on 8-7-2008. Further, in the statement he has voluntarily accepted the increased valuation of the imported goods. It is settled position of law that once, the importer has admitted the redetermination of value on record and has accepted the method of such valuation, he cannot subsequently challenge the same on the same ground. Consequently, we uphold the redetermination of the value carried out by the customs authorities”.

The ratio of the above judgment is squarely applicable to the instant case.

11. In view of the above discussion, the impugned order is set aside and Order-in-Original No. 38/2017, dated 9-3-2017 is restored. However, in the facts and circumstances of the present case, we are of the view that the redemption fine merits reduction from Rs. 5 lakhs to Rs. 3 lakhs under Section 125 of the Customs Act. Further, the penalty imposed on Sh. Jaganath, Partner under Section 112(b) of the Act is reduced from Rs. 3 lakhs to Rs. 1.5 lakhs.”

4.7 The Tribunal in the case of Rakesh Luthra V/s Commissioner of Customs (Airport & General) New Delhi reported at 2024 (387) E.L.T. 691 (Tri.-Del.) has held as under:-

"9 *We take recourse to the observation of the Supreme Court in Naresh J. Shukawani v. Union of India [1996 (83) E.L.T. 258 (S.C.)] that the statement made before Customs officials is not a statement recorded under Section 161 one of the Criminal Procedure Code, 1973 and therefore, it is a period piece of evidence collected by Customs officials under Section 108 of the Customs Act. It*

was further stated by the Court that if such a statement increased incriminates the accused, inculcating him the contravention of the provisions of the Customs Act, it can be considered as substantive evidence to connect the accused with the contravention of the provisions of this Act. Para 4 of the said judgment is reproduced :

"4. It must be remembered that the statement made before 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 the Customs officials under section 108 of the Customs Act. That material incriminates the petitioner inculcating him in the contravention of provisions of the Customs Act. Material can certainly be used to connect the petitioner the contravention inasmuch as Mr. Dudani's statement clearly inculcates 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....."

It is also seen that once there is an admission by the appellant himself, nothing further is required to be proved to the contrary. The Supreme Court in Surjeet Singh Chhabra v. Union of India [1997 (89) E.L.T. 646 = [1996] 1996 taxmann.com 71 (SC)] held that confession made by the appellant binds him. We also place reliance on another decision in Commissioner of C. Ex. v. Systems and Components Pvt. Ltd. [2004 (165) E.L.T. 136 (S.C.) = [2004] 2004 taxmann.com 1156 (SC)] where it has been held that it is a basic and settled law that what has been admitted need not be proved. In view of the above, we are convinced that there is sufficient corroborative evidence to demand the duty on gold said to have been brought by the appellants during the previous visits. Consequently, the demand is confirmed for the extended period."

4.8 As we find the goods have been mis-declared, mis-classified & undervalued the goods have been rightly held to be confiscable under Section 111(m) read with Section 118 of the Customs Act, 1962. However, we find that the redemption fine of Rs.5 lakhs imposed upon the Appellant is on the very higher side and we reduce the same to Rs.2.5 lakhs.

4.9 Apparently, we find that the Appellants have filed the Bill of Entry on the basis of the documents received by him from the foreign supplier. As such it is not even the case of the Revenue that Appellant was responsible for filing any manipulated documents in transaction of the business of the customs. Accordingly, the penalty imposed under the Section 114AA of the Customs Act, 1962 cannot be justified. Delhi bench has in case of Prestige Polymers Pvt. Ltd [2025 (393) E.L.T. 305 (Tri. - Del.)] observed as follows:

56. Learned counsel submitted that even if Prestige had misconstrued or misinterpreted the provision of the notification, it does not amount to suppression of fact and misstatement for imposition of penalty under Section 114AA of the Customs Act. To examine this submission, it is necessary to examine this section and it reads as follows :

114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

57. Clearly, the expressions 'suppression of fact' and 'misstatement' do not even find place in this section. Learned counsel appears to have confused this section with the provision under Section 28(4) to issue a demand invoking extended period of limitation. Section 114AA is attracted if any person knowingly makes signs or uses, or

causes to be made, signed or used, false or incorrect declaration statement or document in the transaction of any business under the Customs Act. Therefore, the submission that penalty under Section 114AA could not have been imposed because there is no suppression of facts is without any force and deserves to be rejected. However, we find that the allegation in the SCN and the finding in the impugned order is that Prestige had wrongly claimed the benefit of an ineligible exemption notification in the Bills of Entry and NOT that there was any factual misdeclaration in the Bills of Entry. Therefore, the penalty under Section 114AA deserves to be set aside.

4.10 In case of A.V. GLOBAL CORPORATION PVT. LTD. [2022 (382) E.L.T. 65 (Tri. - Mumbai)] Mumbai Bench observed as follows:

4.27 Section 114AA of the Customs Act, 1962 read as follows :

"Section 114AA. Penalty for use of false and incorrect material. -"

From plain reading of the said section it is quite evident that penalty under this section is imposable only in case where the person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. Thus for imposing penalties under this section, adjudicating authority is required to determine existence of such declaration, statement or document which is false or incorrect in material particulars. In the present case without making any determination to this penalties under this section have been mechanically imposed by the adjudicating authority. Such penalties imposed without determining existence of such documents and the connection of the such document with the person,

penalties imposed under this section cannot be sustained. Thus we set aside the order imposing penalties under this section."

4.11 Apart from the above modification, we are in complete agreement with the impugned order. In result

- The penalty imposed upon the appellant under Section 114AA is set aside.
- The redemption fine is reduced from Rs 5,00,000/- to Rs.2,50,000/-
- All other parts of the impugned order are upheld.

5.1 Appeal is partly allowed.

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

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)