CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.II

Customs Appeal No.70610 of 2025

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-38-25-26 dated 02/05/2025 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s Uflex Ltd., **.....Appellant**

(A-1, Sector-60, Noida-201301)

VERSUS

Commissioner of Customs, Noida **....Respondent**

(ICD Dadri, Tilapata Village, Karanwas-201311)

APPEARANCE:

Shri Lalitendra Gulani, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70851/2025

DATE OF HEARING & DECISION : 16 October, 2025

SANJIV SRIVASTAVA:

This appeal is directed against order in appeal No NOI-CUSTM-000-APP-38-25-26 dated 02.05.2025 of the Commissioner (Appeal) Central Goods and Service Tax Noida. By the impugned order following has been held:

"I, hereby, uphold the impugned order confirming demand of differentia duty with interest and penalties imposed on the appellant under Section 114A and 114AA of the Customs Act, 1962. I also uphold the appropriation of amount deposited by the appellant against the above mentioned confirmed demand of differential duty with interest. However, I set aside the redemption fine imposed under Section 125 of the Customs Act, 1962 in lieu of confiscation of the goods. The penalty imposed upon the Custom Broker under Section 112(a)(i) of the Customs

Act, 1962 is out of purview of this order. The impugned order stands modified to the above extent.

The appeal is disposed of accordingly.

2.1 Appellant, having IEC-589050796, has filed Bills of Entry no. 5552427 dated 23.09.2021 and 5918112 dated 20.10.2021 for clearance of Aluminium Foil of thickness 5.3 microns by classifying them under CTH 7607 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

2.2 The said goods were imported from Hong Kong and China respectively. As per the provisions of the Notification No. 51/2021-Customs (ADD) dated 16.09.2021, ADD was leviable on the goods sought to be cleared and cleared under these two Bills of Entries. Appellant had filed the bill of entries without assessing the anti dumping duty leviable under this notification thereby short paying the duty as indicated in the table below:

S No	Bills of Entry No. & date	Port	Name of Supplier	Quantity of goods (Kg)	Assessable Value	Differential Duty payable
1	5552427 dated 23.09.2021	ICD Dadri	Dingsheng Aluminium Industries (Hong Kong) Trading Co. Ltd., Hong Kong	40939	1,30,66,746	35,11,416
2	5918112 dated 20.10.2021	ICD Dadri	Shanghai Sunhao Aluminium Foil Co. Ltd., China	17379.9	53,94,200	6,18,584
			Total	58,318.9	1,84,60,946.73	41,30,000

2.3 During the course of further investigation in the matter, Statement of Shri Pankaj Kumar Sharma, Senior Manager (Commercial) of the appellant firm was recorded where Sh. Sharma has stated that the impugned goods imported by them under aforementioned two Bills of Entry was covered under the Notification No. 51/2021-Customs (ADD) dated 16.09.2021 and

Anti Dumping Duty was payable by them and they will pay the applicable ADD and IGST amounting to Rs.41,30,001/- along with interest. He further stated that due to oversight by the CHA and the importer, they unintentionally skipped the payment of ADD on the impugned Bills of Entry

2.4 Appellant during course of investigation made a payment of Rs. 41,30,000/- on account of differential ADD and IGST along with interest of Rs 83,092/- vide challan No. 3766 and 3767 both dated 15.11.2021

2.5 A show cause notice dated 05.06.2023 was issued to appellant asking them to show cause as to why:

(i) *The differential amount of customs duty (anti-dumping duty + diff. IGST) aggregating to Rs. 41,30,000/- (Rupees Forty-One Lakhs Thirty Thousand only) as detailed in Annexure- A to the Show Cause Notice leviable on the aluminium foil of 5.3 microns covered under Bills of Entry as enlisted in aforementioned Annexure-A, should not be demanded and recovered from them as per the provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962 and the Bills of Entry should not be reassessed accordingly.*

(ii) *Interest amounting to Rs.71,890/- (Rupees Seventy-One Thousand Eight Hundred Ninety only) as detailed in Annexure-A to the Show Cause Notice should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962 on the differential customs duty as in para (i) above:*

(iii) *An amount of Rs 42,13,092/- (Rupees Forty-Two Lakhs Thirteen Thousand Ninety-Two only) paid during the investigation should not be appropriated towards the demand of customs duty and interest in para (i)-& (ii) above.*

(iv) *58,318.9 kg of Aluminium Foil of siże 5.3 microns valued at Rs. 1,84,60,946/ -imported vide Bills of Entry as*

listed Annexure- A to the Show Cause Notice should not be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962

(v) *Penalty should not be imposed on them under Section 114A and Section 114AA of the Customs Act, 1962, for the reasons discussed above.*

2.6 The show cause notice was adjudicated as per order in original No 08/ADC/NOIDA-CUS/2024-25 dated 30.05.2024 holding as follows:

ORDER

8. In view of the above discussion and findings, I pass the following Order:-

(i) I order for reassessment of Bill of Entry No. 5552427 dated 23.09.2021 and Bill of Entry No.59181 12 dated 20.10.2021 filed by the M/s Uflex Limited in terms of Notification No.51/2021-CUS (ADD) dated 16.09.2021 which prescribes levy of antidumping duty at the rate 976.99 USD per MT & 398.45 USD per MT vide Sr.No.07 and 02 of the table of the Notification No.51/2021-CUS(ADD)dated 16.09.2021 respectively.

(ii) I confirm the demand of differential Customs duty [anti dumping duty +IGST] amounting to Rs.41,30,000/-[Rupees Forty One Lakh Thirty Thousand Only] as details in Annexure-A to the Show Cause Notice dated 06.06.2023 under Section 28(4) read with Section 28(8) of the Customs Act, 1962 and order for recovery of the same from the Importer;

(iii) I order for recovery of interest under Section 28AA of the Customs Act, 1962 on the demand confirmed at Sr. No. ii above:

(iv) I order for appropriation of an amount of Rs.41,30,000/- already deposited as Customs Duty

and an amount of Rs 83,092/- paid as Interest vide Challan No. 3766 & 3767 both dated 15.11.2021 towards their duty and interest liability;

(v) I hereby order for confiscation of 58,318.9 kg of Aluminium Foil of size 5.3 microns valued at Rs.1,84,60,946/-imported vide Bills of Entry as listed Annexure- A to the Show Cause Notice dated 06.06.2023 under Section 111(m) of the Customs Act, 1962. Since the goods are not available for confiscation, I impose Redemption Fine of Rs.5,00,000/-(Rupees Five Lakh Seventy Thousand Only) in lieu of confiscation under section 125(1) of the Customs Act, 1962;

(vi) I impose penalty of Rs,41,30,000/-[Rupees Forty One Lakh Thirty Thousand Only] upon the importer under Section 114A of the Customs Act, 1962; However, as per first and second proviso of Section 114A, if duty and interest payable thereon are paid within a period of thirty days from the date of communication of this order, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty, so determined; that the benefit of reduced penalty shall be available subject to the condition the amount of penalty so determined has also been paid within thirty days;

(vii) I do not impose penalty upon the importer under Section 112 (a) / (b) of the Customs Act, 1962 in view of the penalty imposed upon them under Section 114A;

(viii) I impose penalty of Rs.1,00,000/- [Rupees One Lakh Only) upon' the importer under Section 114AA of the Customs Act, 1962;

(ix) I impose penalty of Rs.50,000/-[Rupees Fifty Thousand Only) under Section 112 (a)(ii) of the

Customs Act, 1962 upon the Customs Broker i.e. M/s Welgrow Line (North India) Private Limited.

2.7 Appellant filed appeal before Commissioner (Appeal) which has been disposed of by the impugned order.

2.8 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Lalitendra Gulani, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

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

4.2 For imposition of penalty under Section 114A and 114AA, impugned order records the findings as follows:

> *"10. Regarding the imposition of Penalty under Section 114A. I find that the adjudicating authority has imposed penalty under the above Section by holding that the ingredient of willful mis-statement or suppression of facts by the appellant has been clearly established in the present case. Thus, it was held that the appellant willfully short paid the duty of Customs on the subject goods which made themselves liable to be penalized under Section 114A of the Customs Act, 1962.*
>
> *10.1 Further, regarding imposition of the penalty under Section 114AA, I observe that the adjudicating authority has held that the appellant has failed to comply with the anti-dumping notification and suppressed the fact by way of not mentioning the subject notification in impugned Bills of Entry for importing impugned goods from Hong Kong and China thus the appellant has knowingly and intentionally made signed caused to be made and presented such documents which they knew were incorrect on incomplete with intent to evade payment of duty in respect of imported goods, hence rendered themselves liable for penal action under Section 114AA of the Customs Act, 1962.*

10.2 Relevant legal provisions are reproduced below one by one for ease of reference:

> *"Section 114A: Penalty for short-levy or non-levy of duty in certain cases –*
>
> *Where the dutv has not been levied or has 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 willful 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 (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined."*
>
> *'SECTION 114AA. Penalty for use of false and incorrect material. –*
>
> *If a person knowingly or intentionally makes, sians 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."*

10.3 On perusal of documents available on record, I find that the appellant was well aware of the imposition of anti-dumping duty on the imported Aluminium Foil of size 5.3 microns vide Notification No. 51/2021-Cus(ADD) dated 16.09.2021 as the subject notification was in public domain, however the appellant had not made payment of applicable anti-dumping duty with respect to impugned Bills of Entry. Therefore, it is evident that the appellant had willingly suppressed the crucial and important information with the department by way of not mentioning their liability to pay anti-dumping duty on the impugned Bills of Entry and also wrongly self-assessed the amount of duty payable with the sole intent to evade the payment of *applicable anti-dumping duty. This had resulted into short payment of applicable customs levies*

10.4 I further find that the appellant has submitted that they are one of the world's largest multinational flexible packaging solutions company, having world class manufacturing facilities in India as well as in many other Countries. Hence, being such a large organization and also being an AEO T2 Certificate holder, the appellant was to ensure that their employees should be well aware of Customs Law and procedures; should have satisfactory procedure for verifying the accuracy of Customs declarations and in case on an error has been occurred, take immediate remedial steps. However, in the present case, the appellant has failed to comply with these responsibilities cast upon them as an AEO T2 Certificate holder. I am of the considered view that in the present era of self-assessment of duty, the appellant was completely responsible to assess the duty correctly whereas in the present case, the appellant failed to comply with their responsibility to assess the duty correctly and mis-stated and suppressed the facts in the impugned Bill of Entry by way of not mentioning the correct and complete information regarding their duty liability. Thus, I hold that the appellant is liable to be penalized under the provisions of Section 114A of the Customs Act, 1962.

10.5 I also find that in the present case, the appellant has failed to comply with the existing legal provisions and intentionally used documents for import of impugned goods which are incomplete or incorrect and also not mentioned the applicable Notification No. 51/2021-Cus(ADD) dated 16.09.2021 in the subiect Bills of Entry with the intent to evade payment of Anti-Dumping duty. The above act of the appellant is clearly falls under the ambit of Section 114AA and thus, the appellant is liable to be penalized under the Section 114AA of the Customs Act, 1962"

4.3 One of the two bill of entries against which the short payment of duty has been alleged are reproduced below:-

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                         Original (Customs copy)
               Indian Customs EDI System - Imports V1.5R001
                                APL Dadri
              BILL OF ENTRY FOR HOME CONSUMPTION

 [Custom Stn: INAPL6]________CHA : AACW4443JCH002 [WELGROW LINE (NORTH INDIA) PVT]
 BE No/Dt./cc/Typ:5918112/20/10/2021/N/H
 Importer Details :0589050796  PAN : AAACF0109JFT001       AD Code : 0305080
 UFLEX LIMITED
 8      :A-1, SECTOR-60

 NOIDA                              201301        Payment Method  :  Transaction

 LocalIGM No  :3508658/18/10/2021 18/10/2021 Port Of Loading :Shanghai
 Gateway IGM No:2294418 Date:15/10/2021 Port of Reporting:INNSA1
 Cntry Of Orgn.: CHINA                  Cntry Of Consgn.:
 BL    No      : KMTCSHAI144577         H/BL No          :
 Date          : 01/10/2021             Date             :
 No. Of Pkgs.  : 32 CAS                 Gross Wt.        :     20013.500 KGS
 Marks:AS ADD
 & Nos

 Inv No & Dt. : SH210814G  27/09/2021          SHANGHAI SUNHO ALUMINUM FOIL CO.,LTD
 Inv Val      :      71257.59 USD TOI: CIF     NO.3699 XIUYAN ROAD, KANGQIAO
 Freight      :           0.00                INDUSTRIAL ESTAT,
 Insurance    : 0.00                          PUDONG SHANGHAI, P.R. CHINA
 SVB Load(Ass):                 Cust. House:     CN                    -
 SVB Load(Dty):                 HSS Load Rate: 0.00% Amount:     0.00
 Misc. Charges:   0.00              0.00
                                  Discount Rate:  0.00 Discount Amount:      0.00
 EDD          :           0.00        XBE Duty FG Int.:           0.00
 Third Party:

                                      -             BuyerSeller Reltd : No
                             Item Details
                                  Exchange rate:   1.00 USD = 75.7000 INR
 ------------------------------------------------------------------------------
 Slno  RITC       Description                              RSP           Load  PROV
 Qty              Unit Price      CTH    C.Notn C.NSNO      Cus Dty Rt   BCD amt(Rs)
 Unit             Ass Val         CETH   E.Notn E.NSNO      Exc Dty Rt   CVD amt(Rs)
 ------------------------------------------------------------------------------
 1     76071190  ALUMINIUM FOIL (0.0053MM X 915MM) (FOR CAPTIVE USE
 )
 17379.90        4.100000      76071190                      7.50 %      404565.00
              Cus AIDC                       011/2021 17       0.00%           0.00
 KGS             5394199.56    NOEXCISE                      0.00 %           0.00
           Educational Cess on CVDs   :                      0.00 %           0.00
 Sec & Higher Edu. Cess on CVD        :                      0.00 %           0.00
           Customs Educational Cess   :                      0.00 %           0.00
 Customs Sec & Higher Edu. Cess       :                      0.00 %           0.00
 Social Welfare Surcharge:                                  10.00 %       40456.50
              IGST                  001/2017 III268         18.00 %  1051059.75
              GST Cess              001/2017 56              0.00 %          0.00
 ------------------------------------------------------------------------------
      Rs.    5394199.56                   Page Total        Rs.    1496081.30
               Rs.    5394199.56          BE Gross Total    Rs.    1496081.30
 BCD           Rs.     404565.00          NCD Duty          Rs.          0.00
 ANTID         Rs.          0.00          SAFEGUARD Duty    Rs.          0.00
 CVD           Rs.          0.00          Sch 2 Spl Excise Duty  Rs.     0.00
 CESS          Rs.          0.00          GSIA              Rs.          0.00
 TTA           Rs.          0.00
 Edu. Cess CVD Rs.          0.00          Customs Edu. Cess      Rs.     0.00
 Health CVD    Rs.          0.00          Addl Duty - (Imports)  Rs.     0.00
 SHE. Cess CVD Rs.          0.00          SH Cust Edu. Cess      Rs.     0.00
 ------------------------------------------------------------------------------
 Duty Payable:                                              Rs.    1496081
 Rs.  Fourteen Lakh Ninety Six Thousand and Eighty One only
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                       Container Details                  For UFLEX LIMITED
                       ================
   1 3508658 F BMOU1314034

                 GSTIN Details                           Authorised Signatory
                 =============
 Document No         Typ State Cd/Name    IGST Ass.val   IGST Amt   GST Cess Amt
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From the perusal of the Bill of Entry it is evident that appellant has correctly declared the goods as Aluminium foil having thickness of 5.3 micron. Impugned order in para 8.2 records as follows:

"8.2 In view of the said Notification No 51/2021-Customs (ADD) dated 16.09.2021, I observe that, ADD has been imposed by the Central Government on 'Aluminium Foil' falling under chapter heading 7607 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from China PR, Malaysia, Thailand and Indonesia and imported into India as detailed in the 'Table' of the aforesaid Notification dated 16.09.2021. Further, no ADD is leviable, as per exclusion clause (i) of the aforesaid Notification dated 16.09.2021, on Aluminium Foil thickness ranging from 5.5 microns to 80 microns originating in China, however in all the impugned appeals, the appellant has itself declared that they are importing Aluminium Foil having thickness of 5.3 microns to manufacture various products. In view of above, it is clear that anti dumping duty is leviable on the impugned goods imported by the appellant into India."

4.4 From the observations made in the impugned order, it is evident that the appellant has not paid the Anti Dumping Duty leviable on the goods as declared by him on the bill of entries referred above. When the matter was taken up for investigation, and summons dated 20.10.2021 for appearance on 28.10.2021 & dated 02.11.2021 for appearance on 12.11.2021 were issued to Shri Pankaj Kumar Sharma, Senior Manager (Commercial), appellant realized their mistake and deposited the Anti Dumping Duty leviable along with interest, vide challans dated 05.11.2021. There is no dispute in respect of levy and payment of the Anti dumping duty. The dispute is limited in respect of the penalties imposed on the appellant under section 114A and 114AA.

4.5 The facts as reproduced above do not support the case of the revenue alleging suppressing, mis-statement, mis-declaration etc., with the intent to vede payment of duty. We note that Hon'ble Supreme Court has in the case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)] has clearly held that in absence of these ingredients penalty cannot be imposed under Section 11AC of Central Excise Act, 1944 which is pari-materia to Section 114A of the Customs Act, 1962.

4.6 Delhi bench has in the case of Midas Fertchem IMPEX Pvt. Ltd. [2023 (384) ELT 397 (T-Del)] observed as follows:

> *"50. In practice, the importer makes an entry under Section 46 and also self-assesses duty under Section 17(1) by filing the Bill of Entry. There is no separate mechanism to self-assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under Section 46. Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and in some cases even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason, there is a provision for re-assessment of duty by the officer. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer misdeclared. As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self-assessment is a matter of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under Section 28. Therefore, any wrong*

classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression.

51. Insofar as the description of the goods is concerned, usually, the import documents reflect the true nature and quantity of the goods imported but sometimes they may not. The importer is required to make a true declaration of the goods which are actually imported and not just the goods declared in the import documents. Thus, if the goods actually imported are more or different from what is declared in the Bill of Entry, the importer would have made a mis-declaration.

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56. We have considered these submissions. The two sections under which penalties were imposed are Section 114A and Section 112. These read as follows :

> *"Section 114A. Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has 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 (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined :*
>
> *Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section*

shall be twenty-five per cent of the duty or interest, as the case may be, so determined :

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account :

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Section 112. Penalty for improper importation of goods, etc. -

Any person, -

(a) 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

111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the

declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest."

57. As may be seen the ingredients necessary for imposing a penalty under Section 114A are identical to the ingredients necessary to invoke extended period of limitation. We have found that extended period of limitation cannot be invoked in these cases. Logically, the penalty under Section 114A imposed on the appellant importers also cannot be sustained for the same reason.

4.7 In case of Biotavia Lbs Pvt. Ltd. [2016 (336) ELT 668 (T-Del) following was observed:

"7. Admittedly the appellant has paid the ADD along with interest and is now aggrieved by the confiscation of goods, imposition of redemption fine and penalties. The only question to be looked into is whether the failure to pay the ADD was due to any deliberate act to evade payment of duty. The ADD Notification No. 67/2009, dated 16-6-2009 stipulated validity for 5 years unless revoked, superseded

or amended from the date of notification. The notification was to lapse on 15-6-2014 if not revived. The notification 11-6-2014 extended the period. According to the appellants they were not aware of this further notification dated 11-6-2014 extending the period of the notification. The omission to pay the duty was only due to the ignorance of this fact and it was not willful. On examination of records, the submission of the appellant that the check list of the Bill of entry generated by the system did not show levy of ADD is correct. The appellant made online payment of the duty so assessed by officer. On being informed about the levy of duty, the appellant has immediately paid the ADD not only for the present consignment but also for the earlier consignment with interest. The director of the Company Shri Sameer Goyal has deposed that the omission occurred only because he was not aware that the goods attracted anti-dumping duty. Further sub-section (2) of Section 28 of the Customs Act, 1962 provides that when duty along with interest is paid no show cause notice shall be served and no penalty shall be imposed. After hearing the submissions and going through the records we do not find it possible to agree with the finding of the Commissioner that the failure to pay ADD was due to any deliberate act to evade payment of duty. As evidenced by the checklist, the bill of entry was finally assessed by the appraiser without levy of anti-dumping duty. The appellant paid such duty as per this assessment and had no reason to doubt that any further duty was payable. On intimating that anti-dumping duty was also payable, the appellant has immediately made the payment of ADD, of not only of this consignment but also of the earlier consignment imported in January, 2015. He also paid the applicable interest. This immediate response of paying entire duty demand along with interest along with the fact that the bill of entry assessed by the appraising officer did not contain element of anti-dumping *duty persuades us to hold that the failure on the part of the appellant was only a bona fide omission. Further, sub-Section (2) of Section 28 provides that if a person is chargeable to duty or interest and the duty along with interest as ascertained by the proper officer is paid, then no show cause notice shall be served and no penalties to be imposed. In such circumstances we are of the considered view, that the confiscation of goods and imposition of redemption fine and penalty is totally unjustified. The impugned order is therefore not sustainable."*

4.8 In case of Daxen Agritech India Pvt Ltd. [2024 (20) CENTAX 467 (T-Del)] Delhi bench observed as follows:

> *15. We now come to the issue of imposing penalty under section 114A of the Customs Act on the appellant. As we have held that it is not a case of willful suppression, mis-statement or mis- declaration by the appellant, the ingredients required for invoking the penalty being the same, we hold that penal action under the provisions of section 114A as imposed by the impugned order is not justifiable and is hereby set aside. We are also supported by the decision of this Tribunal dated 1-12-2022 (arising out of the same impugned order) refuting the observations of the Principal Commissioner on self assessment by the appellant, inter-alia observing:*
>
>> *"14…….Self assessment is subject to any reassessment by the proper officer. Self assessment can also be appealed against to the Commissioner (Appeals). They can assess duty as per their understanding and the officers are free to reassess it as per section 17(4). Mis-classification or incorrect assessment of duty does not amount to mis-declaration in the bill of entry, nor does it attract any penalty.*

> *15………..We understand that the bills of entry are cleared on the basis of self assessment, they are subjected to post clearance audit. If so, it gives sufficient time to the officers to find if any duty has escaped assessment and issue a demand under section 28. However, there can be no penalty for wrong self-assessment by the importer".*

16. On similar grounds, we hold that the appellant cannot be held liable for penalty under section 114 AA of the Customs Act and the reasoning given by the Principal Commissioner that at the time of presenting the bill of entry, the importer made and subscribed to false declaration against the contents of bills of entry, in contravention to section 46(4) of the Act is unsustainable in view of the discussion above.

4.9 Hyderabad Bench has in the case of Vesuvius India Ltd. [2019 (370) ELT 1134 (T-Hyd)] observed as follows:

"5. We have considered the arguments of both sides and perused the records. It is not in dispute that the importer appellant has manufactured refractory bricks and that they imported aluminous cement for the purpose. …….. It is also not in dispute that the goods were declared by the trade name and necessary documents were produced along with bills of entry by the appellant. ……. The only point of allegation that can sustain in the present case is that the assessee has wrongly classified the imported goods in their bills of entry. The importer assessee is not an expert in classification of products and it is always possible that they claimed wrong classification. It is open for the department to direct the importer to correct classification or issue a show cause notice proposing revision of classification. Merely claiming the wrong classification by itself does not amount to mis-declaration of the goods and there is nothing on record to show that the description of the goods in the Bill of Entry and other documents as well as in the test report do not match. The department's case has to

fail on this ground alone for the extended period of limitation and correspondingly the penalties also need to be set aside.

6. ……...

7. As we have found that there was no misdeclaration at all and the appellant is entitled for the exemption notification in any case and there is nothing to be gained by the appellant by classifying their product under one heading or the other, we find the confiscation of the goods and imposition of penalties are also not sustainable and need to be set aside and we do so."

4.10 In view of the above discussions we do not find any merits in the impugned order to the extent it upholds the penalties imposed on the appellant under Section 114A and 114AA.

5.1 Appeal is partly allowed as indicated in para 4.10 above.

(Operative part of the order pronounced in open court)

(P. DINESHA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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