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

REGIONAL BENCH - COURT NO.I

**Customs Appeal No.70635 of 2025**

(Arising out of Order-in-Original No.12/PC/NOIDA-CUS/2024-25 dated 28.03.2025 passed by the Principal Commissioner of Customs, Noida)

**M/s CONCOR CFS,** **.....Appellant**
(ICD, Dadri, Gautam Buddha Nagar,
U.P.-201311)

*VERSUS*

**Principal Commissioner of Customs,**
**Noida** **....Respondent**
(Concor Complex P.O. Container
Depot, Gautam Buddh Nagar, Greater Noida
U.P.-201311)

**WITH**

**Customs Appeal No.70636 of 2025**

(Arising out of Order-in-Original No.12/PC/NOIDA-CUS/2024-25 dated 28.03.2025 passed by the Principal Commissioner of Customs, Noida)

**M/s O. Sairam,** **.....Appellant**
(M/s CONCOR CFS,
ICD, Dadri, Gautam Buddha Nagar,
U.P.-201311)

*VERSUS*

**Principal Commissioner of Customs,**
**Noida** **....Respondent**
(Concor Complex P.O. Container
Depot, Gautam Buddh Nagar, Greater Noida
U.P.-201311)

**AND**

**Customs Appeal No.70637 of 2025**

(Arising out of Order-in-Original No.12/PC/NOIDA-CUS/2024-25 dated 28.03.2025 passed by the Principal Commissioner of Customs, Noida)

**Shri Subodh Kumar,** **.....Appellant**
(S/o Shri Prem Singh, M/s CONCOR CFS,
ICD, Dadri, Gautam Buddha Nagar,
U.P.-201311)

*VERSUS*

**Principal Commissioner of Customs,**
**Noida** **....Respondent**
(Concor Complex P.O. Container
Depot, Gautam Buddh Nagar, Greater Noida
U.P.-201311)

**APPEARANCE:**

Shri Nishant Mishra, Advocate for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NOs.- 70009-70011/2026**

DATE OF HEARING : 19.11.2025
DATE OF PRONOUNCEMENT : 12.01.2026

Customs Appeal No.70635/2025 has been preferred by M/s CONCOR CFS[1] challenging the Order-in-Original No.12/PC/NOIDA-CUS/2024-25 dated 28.03.2025, to the extent of imposition of penalties of Rs.50,000/-, Rs.2,50,000/-, Rs.2,50,000/- & Rs.50,000/- under Regulation 12(8) of the Handling of Cargo in Customs Areas Regulations, 2009, Section 114AA, Section 117 & Section 158(2) respectively of the Customs Act, 1962[2].

2. Customs Appeal No.70636/2025 has been preferred by Shri O. Sairam[3], to the extent of imposition of penalty of Rs.50,000/- under Section 114AA of the Act.

3. Customs Appeal No.70637/2025 has been preferred by Shri Subodh Kumar[4], the Assistant Manager (Commercial and Operation) of Appellant No.1, to the extent of imposition of penalty of Rs.50,000/- under Section 114AA of the Act.

4. Since the aforesaid three appeals arise out of the common Show Cause Notice[5] dated 31.03.2023 and common Order-in-Original No.12/PC/NOIDA-CUS/2024-25 dated 28.03.2025 hence, all the three appeals are heard together.

5. The Appellant No.1 is a public sector undertaking engaged in transportation and handling of containers and during the relevant time, the Appellant No.1 was also maintaining Container

[1] Appellant No.1
[2] Act
[3] Appellant No.2
[4] Appellant No.3
[5] SCN

Freight Station[6] at Inland Container Depot[7], Dadri U.P. The Appellant No.2 & 3 are employees of Appellant No.1 and during the relevant time were working as Assistant Manager (Commercial and Operation) of Appellant No.1.

6. Briefly stated, the facts of the case are such that on 15.11.2018 at around 10:59 Hrs., the staff of the Appellant No.1 in EXIM-Cell issued Entry Permits numbers EPC181115005 & EPC181115006, for two loaded containers bearing numbers BMOU5791210 & SEGU5336240, on the basis of letter dated 15.11.2018 of Shipping Line namely M/s Star Shipping Services (India) Ltd. and check list for Shipping Bill dated 14.11.2018 having name of exporter M/s R.D. IMPEX Pvt. Ltd. bearing stamp of customs broker namely M/s Zen Cargo logistics. The said two entry permits were generated under Entry Permit for Container[8] on the request of shipping line for export off-loading of loaded containers. The two containers arrived at the gate of CONCOR CFS ICD Dadri on 16.11.2018 and entry was done at around 02:40 Hrs. on 16.11.2018.

7. It is the case of Appellants that one Shri Vinod Kumar Dubey of M/s Star Carrier (customs broker) approached the employees of the Appellant No.1 on 16.11.2018 representing that the two containers in question were meant for customs clearance at All Cargo Logistics CFS, ICD, Dadri and the same were mistakenly entered into CONCOR by the transporter as both CONCOR and All Cargo Logistics has the same code i.e. IN-DER6. On the representation so made, Shri Vinod Kumar Dubey requested that the two containers be moved out of CONCOR for shifting to All Cargo Logistics, CFS, ICD Dadri.

8. As per the Appellants, Shri Vinod Kumar Dubey was requested to produce permission of the Customs Authorities and was also required to pay dues of Appellant No.1 for handling/storage and additional charges for containers. On the request so made, Shri Vinod Kumar Dubey requested the employees of the Appellant No.1 to provide calculation of dues,

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[6] CFS
[7] ICD
[8] EPC

for which purpose the employees of Appellant No.1 prepared a dummy Export Application at 17:52 hrs. on 16.11.2018 on the basis of a dummy shipping bill. However, since Shri Dubey could not produce the required permission from Customs Authorities, the two containers remained in CONCOR, which fact was informed by employees of the Appellant No.1 to the SHED, Customs at CONCOR CFS.

9. The record shows that subsequently an exporter namely M/s Kunal International, Delhi filed Shipping Bill No.9070233 dated 22.11.2018 for export of consignment of 'Spare parts of two wheelers' to Bangladesh under Export Invoice dated 15.11.2018 along with related packing list disclosing CIF value of consignment at USD 204366.12. Thereafter one M/s Kiran Carriers, customs broker of M/s Kunal international presented Shipping Bill No.9070233 dated 22.11.2018 with permission from SHED Customs dated 24.11.2018 and upon receiving the said shipping bill, the employees of Appellant No.1 commenced de-stuffing process in warehouse from 24.11.2018 to 26.11.2018 under the supervision of SHED Customs for 100% physical examination of goods. However, on the basis of Export Application slip dated 16.11.2018 prepared by the employees of the Appellant No.1, the officers of SIIB formed an opinion that auto parts were allowed gate in on 16.11.2018 in two containers against a fictious Shipping Bill dated 16.11.2018 and since the export documents filed with the customs for registration of goods and export documents submitted with the employees of the Appellant No.1 indicated different shipping bills and different names of customs brokers for the same consignment, hence SIIB officers examined the consignment from 29.11.2018 to 03.12.2018. During further investigation, statements of various persons including the Appellant No.2 & 3 were also recorded on 14.11.2018. Thereafter, on the request made by the exporter for provisional export, the consignment was allowed clearance for export provisionally and the consignment was eventually dispatched for export on 25.01.2019. SCN No.30/PC/Noida Customs/2022-23 dated 31.03.2023 was then issued against

M/s Kunal International (exporter), M/s LUAS Maritime (freight forwarding company), Shri Vinod Kumar Dubey (G-Card holder of M/s Star Carrier), the Appellant No.1 (custodian), the Appellant No.2 & 3 (employees of Appellant No.1) and Shri Shashi Kumar (F-Card holder of M/s Kiran Carrier, customs broker). The SCN proposed confiscation of goods exported by M/s Kunal International and also imposition of penalties on other noticee's. So far as Appellants are concerned, the SCN proposed imposition of penalties on the Appellant No.1 under Regulation 12(8) of the Handling of Cargo in Customs Area Regulations, 2009 as well as under Section 114AA, 117 &158(2) of the Act and imposition of penalties on the Appellant No.2 & 3 under Section 114AA of the Act.

10. The aforesaid SCN came to be adjudicated by the impugned order dated 28.03.2025 passed by Principal Commissioner of Customs, Noida, by which the redemption fine has been demanded from the exporter and penalties have been imposed on the other co-noticee's. So far as the Appellants are concerned, the impugned order confirmed imposition of separate penalties on the Appellant No.1 under Regulation 12(8) of the Handling of Cargo in Customs Area Regulations, 2009 as well as under Section 114AA, 117 & 158(2) of the Act and also imposition of penalties on the Appellant No.2 & 3 under Section 114AA of the Act. Aggrieved by the impugned order dated 28.03.2025, the Appellants have preferred separate appeals before this Tribunal. On the enquiry made from the office, it appears that the impugned order has been challenged by the present Appellants only and other co-noticee's have not filed any appeal against the impugned order till date. Hence, the three appeals are taken up and heard together.

11. Ld. Counsel for the Appellants submitted that the impugned order is not sustainable in law as the same has been passed on the basis of inadmissible evidence. He also argued that the entire case is based on the dummy Export Application and Shipping Bill which were generated by the employees of the Appellant No.1 for calculation of dues and additional charges and

it is not the case of the Revenue that the said dummy documents have been used by the Appellants in any manner whatsoever or any benefit has been derived basis the said documents. He further argued that necessary ingredients of penalty under Section 114AA, 117 & 158(2) of the Act and Regulation 12(8) of the Regulations are not made out against the Appellants. Lastly, he argued that the findings recorded in the impugned order are perverse and incorrect.

12. Per contra, learned Departmental Authorized Representative appearing for the revenue supported the impugned order and the findings recorded therein. He argued that penalties have been rightly imposed against the present Appellants.

13. Heard both the sides and perused the appeal records.

14. A perusal of the impugned order shows that eight questions have been framed by the Adjudicating Authority in paragraph 19 in the impugned order, out of which questions No. (E), (F) & (G) relates to the present Appellants. While deciding questions No. (E), (F) &(G), the Adjudicating Authority has recorded findings to the effect that the Shipping Bill, on the basis of which gate in was allowed, was bearing the name of some other exporter whereas the entry permit was in the name of the instant exporter, no export loaded container can be gated in at CONCOR CFS on the basis of export application under any circumstances, the submission that dummy export application with dummy Shipping Bill No.1234567 was prepared only for the purpose of calculation of dues does not merit acceptance. For recording these findings, the impugned order relies on the statements of various persons including Shri Amit Goyal (proprietor of M/s Kunal International), statement of Shri Surya Saxena (employee of M/s Lucas Maritime), Shri Vinod Kumar Dubey (G-Card Holder of M/s Star Carrier) and also the statements of the Appellant No.2 & 3. On these findings, the Adjudicating Authority has concluded that the Appellants were working hand in gloves with the CHA and the forwarder and they did the discharged their respective duties properly. The

impugned order thus confirms penalties on the Appellants with the conclusion that the Appellant No.1 custodian and its officers the Appellant No.2 & 3 acted in blatant disregard of the provisions of the Act and the regulations made there under.

15. I find from the SCN and the impugned order that the core allegation against the Appellants is that the two containers were allowed gate in on the basis of the Export Application No. 1811160053 dated 16.11.2018 with Shipping Bill No.1234567 dated 16.11.2028 whereas it is the stand of the Appellants that the two containers were allowed gate in on the basis of entry permits dated 15.11.2018 and the entry was done at around 02:40 Hrs. on 16.11.2018. It is also the case of the Appellants that the Export Application No.1811160053 dated 16.11.2018 was generated on the basis of dummy Shipping Bill No.1234567 dated 16.11.2028 at 17:52 Hrs. on 16.11.2018.

16. Further, I find from the impugned order that the specific case set up by the Appellants that the two containers were allowed gate in at around 02:40 Hrs. on 16.11.2018 and that the Export Application No.1811160053 dated 16.11.2018 was generated on the basis of dummy Shipping Bill No.1234567 dated 16.11.2028 at 17:52 Hrs. on 16.11.2018, has not been disputed in the impugned order. Thus the revenue has neither disputed nor rejected the contention of the Appellants that the gate in was allowed at around 02:40 Hrs. on 16.11.2018 whereas the dummy Shipping Bill and Export Application were prepared on 16.11.2018 at 17:52 Hrs. Now once the Export Application and dummy Shipping Bill were prepared at 17:52 Hrs. on 16.11.2018 i.e. after the two containers were allowed gate in at around 02:40 Hrs. on 16.11.2018, then the finding in the impugned order that the two containers were allowed gate in on the basis of Export Application No.1811160053 dated 16.11.2018 and dummy Shipping Bill No.1234567 dated 16.11.2028 is clearly perverse and incorrect.

17. Once the finding recorded in the impugned order that the Export Application and dummy Shipping Bill were used for gate in of two containers is found to be incorrect and there is also no

allegation in the SCN or in the impugned order to the effect that the dummy shipping bill was otherwise used by the Appellants or any other person for any purpose whatsoever, then the case setup by the Appellants that the export application and the dummy shipping bill were prepared only for calculation of dues appears to be correct, inasmuch as the number of dummy shipping bill was 1234567 which is clearly not a unique, system generated identifier assigned to shipping bill by the Indian Customs Electronic Data Interchange[9] systems. Even otherwise, when the allegation of use of shipping bill is found to be incorrect and there is complete absence of any other allegation regarding the possible misuse of dummy shipping bill, there cannot be any reason for the Appellants to generate a dummy shipping bill. The reason given in the impugned order that dummy export application and shipping bill were not required to be generated when there was no permission of customs, also overlooks the fact that the Appellants were acting under the *bona fide* impression that the containers are to be shifted to All Cargo Logistics after permission of customs. In this view of the matter, the reason given by the Appellants for generation of dummy export application and dummy shipping bill merits acceptance.

18. I also find that the impugned order has been passed by extensively relying on the statements of various persons without following the procedure enshrined under Section 138B of the Act. Section 138B of the Act is *pari-materia* to Section 9D of the Central Excise Act, 1944 as held by Hon'ble Delhi High Court in Basudev Garg vs. Commissioner of Customs 2013 (294) E.L.T. 353 (Del). Section 9D of the Central Excise Act, 1944 was considered by Hon'ble Punjab & Haryana High Court in Jindal Drugs Pvt. Ltd. vs. Union of India 2016 (340) E.L.T. 67 (P&H) wherein the following was held:-

> ***"19.****Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a Gazetted Central Excise Officer during inquiry or*

[9] EDI

*investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the Gazetted Central Excise Officer, unless and until he can legitimately invoke clause (a) of Section 9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.*

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***22.****Clearly, if this procedure, which is statutorily prescribed by plenary Parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the CCE, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof."*

19. In view of the law stated above, it was not open for the Adjudicating Authority to straight away rely on the statements and he was required to either invoke clause (a) of Section 138B(1) or admit the statement in evidence and thereafter proceed with the matter in accordance with Section 138B. Having not followed this procedure and not invoked Section 138B, the Adjudicating Authority has clearly relied on

inadmissible evidence. I also find that penalty under Section 114AA can be imposed only where a person knowingly or intentionally makes, signed or uses, false and incorrect material, in the transaction of any business under the Act. In the present case, there is no evidence on record that the dummy export application or dummy shipping bill were used for any purposes in the transaction of any business under the Act. At any rate, Section 114AA can be invoked only against the fraudulent exports as per the 27th report of the Standing Committee on Finance and the Appellants, not a fraudulent exporter, no penalty under Section 114AA can be imposed on the Appellants. Reference in this regard may be made to the decision of this Tribunal in A.V Global Corporation Pvt. Ltd. vs. Commissioner of Customs (Import & General), New Delhi (2024) 25 Centax 37 (Tri-Del), where this Tribunal has held as under:-

> ***"7.*** *Coming to the penalty imposed under 114 AA the objective of section 114AA as was subsequently incorporated, is apparent from 27th report of the Standing Committee on Finance (2005) which proposed this new section consequent to the deduction of several cases of fraudulent export where the exports were shown only on paper and no goods crossed the Indian boarder. The Committee opined introducing provisions of levying penalty upon 5 times the value of goods as a right deterrent the Constitution Bench of Hon'ble Supreme Court in the case of Kalpana Mehta v. Union of India in Civil Writ Petition No.558 of 2012 has held that the Parliamentary Committee Report is to be considered to see the purpose for which a statutory provision has been brought in. Since provision 114 AA is against the fraudulent exporterswe hold that the same is wrongly invoked for penalizing the Customs House Agent. We draw our support from the decision of this Tribunal in the case of World-Wide Cargo v. CCE, Bangalore reported in 2022 (379) E.L.T. 120 (Tri.-Bang). In the light of the above discussion, we hold that penalty*

*even under 114AA has wrongly been imposed upon the Appellant-CHA, same is liable to be set aside."*

20. Imposition of penalty under Section 158(2) is also not warranted as Section 158(2) is merely an enabling provision and not a penal provision as held in Sunil Kumar Jain vs. Commissioner of Customs, Jaipur 2017 (349) E.L.T. 309 (Tri-Del) wherein the following has been held:-

> ***"4.*** *As is seen from the above, the said Section empowers the Central Govt. to make any rule or regulation in terms of which a penalty to the extent of Rs. 50,000/- can be imposed on any person for contravention of the provisions of rule or regulation. As such, it is seen that the said section is empowering section and cannot be adopted by itself for imposition of penalty. It does not stand to brought to our notice that any rule or regulation stand framed under this section for imposition of penalty. Even if they stand framed the penalty has to be imposed in terms of such framed rules and regulations and not in terms of the empowering provisions. As such, we are of the view that penalty imposed under Section 158(2)(ii) cannot be sustained. Accordingly, the same is set aside the impugned order and allowed the appeal with consequential relief to the Appellant."*

21. As regards penalty under Section 117, the same is a residual provision which can be invoked for imposition of penalty for any contravention, in respect of which no express penalty is elsewhere provided under the Act. In the present case, since the impugned order imposes simultaneous penalty under Section(s) 114AA, 158(2) and also under Regulation 12(8), invocation of residuary penal provision under Section 117 is clearly not permissible. The present case is also not a case where penalty under Regulation 12(8) is warranted for violation of any regulation. On the contrary, the facts of the present case when

seen in entirety clearly show that the entire case is that of an inadvertent mistake not involving any *mala fide* on the part of the Appellants. Once the entire case against the Appellant No.1 is not sustainable in law, than the imposition of penalties against the Appellant No.2 & 3 also cannot be sustained.

22. In view of the above discussion, the impugned order dated 28.03.2025, to the extent the same relates to the present Appellants, is set-aside and all the three appeals are allowed with consequential reliefs to the Appellants, as per law.

(Order pronounced in open court on- **12.01.2026**)

**Sd/-**
**(P. K. CHOUDHARY)**
**MEMBER (JUDICIAL)**

*LKS*