CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70826 of 2025

(Arising out of Order-in-Appeal No.174 & 175-CUS/APPL/LKO/2024 dated 08/03/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Hira Singh S/o Sri Ram Dhari Singh, ...Appellant
(R/o 14, Basement, Baghichi
Madhodas Red Fort, Delhi-110006)

VERSUS

Commissioner of Customs (Pre.), Lucknow ....Respondent
(7th Floor, Apratyaksh Kar Bhawan,
Vibhuti Khand, Gomti Nagar, Lucknow-226024)

APPEARANCE:

Shri Nagendra Krishna, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70019/2026

DATE OF HEARING : 12 January, 2026
DATE OF DECISION : 12 January, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.174 & 175-CUS/APPL/LKO/2024 dated 08/03/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order Commissioner (Appeals) has upheld the penalties imposed upon the appellant under Section 112(a) & (b) of the Customs Act, 1962.

1.2 By the Order-in-Original No.134/ADC/2022-23 dated 13.03.2023 following has been held:-

"Order

(a) I order for absolute confiscation of total 11,40,000 sticks of seized foreign origin cigarettes valued at Rs.

1,71,00,000/- (Rupees One Crore Seventy One Lakhs only) under Section 111(b), (c), (e), (f), (h), (i) of the Customs Act, 1962 read with Section 7 of COTPA, 2003.

(b) I order for confiscation of seized 107 bundles of phool jhadu valued at Rs. 1,60,500 under Section 119 of the Customs Act, 1962. However, I give an option to the legal owner of the phool jhadu to get his seized phool jhadu redeemed on payment of redemption fine of Rs. 4C,125/- in lieu of confiscation in terms of section 125(1) of the Customs Act, 1962. Since the seized phool jhadu had already been release provisionally vide letter dated 16.12.2021 in compliance to the provisional release order dated 30.112021 on execution of Bond of full value of the seized Phool jhadu along with the security of Rs. 40,125/-, hence I order for appropriation of the said security amount of Rs. 40,125/ in the government account against the confiscation of the seized Phool jhadu.

(c) I order for confiscation of the Truck (container) bearing registration No NL-01/AE-8342 valued at Rs. 13,00,000/- (Rupees Thirteen Lakhs only) under the provisions of Section 115(2) of the Customs Act, 1962. However, I give an option to the legal owner of the truck to get his seized truck redeemed on payment of redemption fine of Rs. 1,30,000/- (Rs. One Lakh rupees only) in lieu of confiscation in terms of section 125(1) of the Customs Act, 1962. Since the seized truck No NL-01/AE-8342 had already been released provisionally vide letter dated 27.07.2022 in compliance to the Commissioner (appeals), Lucknow's order dated 05.04.2022 on execution of Bond of full value of seized truck along with the security of Rs. 1,30,000/-, hence I order for appropriation of the said security amount of Rs. 1,30,000/- in the government account against the confiscation of the seized truck No NL-01/AE-8342.

(d) I impose Penalty of Rs. 2,00,000/- (Rupees Two lakhs only) upon Shri Chothu Ram (DL No.

RJ2319810005692)S/o Shri Banna Ram, Dudwa, Tehsil Dantaramgarh, Sikar, Rajasthan-332046 (Driver of the Truck) under Section 112(a) & (b) of the Customs Act, 1962 for their acts of omission and commission that has rendered the goods liable for confiscation.

(e) I impose a Penalty of Rs. 5,00,000/- (Rupees Five lakhs only) upon Shri Laxminarayan (Aadhar No. 468371292109) S/o Shri Phool Chand, Pujari Ka Bass, Jajod (Sawai Madhopur), Sikar, Rajasthan-332722. (Owner of the Truck) under Section 112(a) & (b) of the Customs Act, 1962 for their acts of omission and commission that has rendered the goods liable for confiscation.

(f) I impose Penalty of Rs. 2,00,000/- (Rupees Two lakhs only) upon Shri Hira Singh S/o Shri Ram Dhari Singh, Care Taker of M/s Star International Exim, Basement, 14th Madhodas, Bagichi, Near Red Fort, Delhi-110006 (the Consingee) under Section 112(a) & (b) of the Customs Act, 1962 for their acts of omission and commission that has rendered the goods liable for confiscation.

(g) I impose Penalty of Rs. 2,00,000/- (Rupees Two lakhs only) upon Mrs. Nisha Devi W/o Shri Hira Singh, Proprietor of M/s Star International Exim, Basement, 14th Madhodas, Bagichi, Near Red Fort, Delhi-110006 (Aadhar No. 959355655151, GSTIN No. 07ATFPD 8195D:Z0) under Section 112(a) & (b) of the Customs Act, 1962 for their acts of omission and commission that has rendered the goods liable for confiscation.

(h) I impose Penalty of Rs. 2,00,000/- (Rupees Two lakhs only) upon Mrs. Prismiti Timungpi (Aadhar No. 957168358820) D/o Lakhindra Timung. Proprietor of M/s Serika Enterprise, Vill/P.O. Umrenti, P.S. Hamren, Disst. West Karbi Anglong, Assam-782486 (the Consigner) (GSTIN No.-18AZYPT1200A1ZG) no.under Section 112(a) & (b) of the Customs Act, 1962 for their acts of

(i) I impose Penalty of Rs. 1,00,000/- (Rupees One lakhs only) Shri Vijay Shaw S/o Janardan Shaw, 2 Makhla

Sebasadan, Uttarpara Kotrung (M), Rahgunathpur, Hooghly, West Bengal under Section 112(a) & (b) of the Customs Act, 1962 for their acts of omission and commission that has rendered the goods liable for confiscation.

(j) I impose Penalty of Rs. 5,00,000/- (Rupees Five lakhs only) upon M/s DIAL Logistics Pvt. Ltd., (GSTIN No.-07AAACZ2731N1Z2)Kila No. 14/2, 16, 17, Musti No. 69, Baghola, Palwal, Haryana-121101 under Section 112(a) & (b) of the Customs Act, 1962 for their acts of omission and commission that has rendered the goods liable for confiscation.

(k) I impose Penalty of Rs. 2,00,000/- (Rupees Two lakhs only) upon Shri Raju under Section 112(a) & (b) of the Customs Act, 1962 for their acts of omission and commission that has rendered the goods liable for confiscation.

(k) I reserve the right to impose penalty under Section 112 (a) & (b) of the Customs Act, 1962 on the Noticee "To whomsoever it may concern", as and when identified and accessed to by the department."

1.3 In the present case, I am only concern with the appeal filed by the appellant i.e. Shri Hira Singh on whom penalties has been imposed.

2.1 Acting on an specific intelligence, officers of Customs (P) Division, Lucknow intercepted a truck bearing registration no.NLO1 AE 8342 on Lucknow-Ayodhya Road near Ahmedpur Toll Plaza on 18.04.2021.

2.2 On inquiry driver of the truck informed that the goods loaded in the truck were of Phool Jhadu and showed copy of invoice and e-way bill of the said Phool Jhadus. On checking of the truck some plastic bags were found kept beneath the bundles of phool jhadu. After complete search of the vehicle, 107 bundles of phool jhadu valued at Rs.1,60,500/- and 42 plastic sacks of different brands of foreign origin cigarettes containing 11,40,000 sticks valued at Rs.1,71,00,000/-found concealed beneath the phool jhadu. On scanning the bar codes available on the packets of cigarettes the cigarettes were found made in Switzerland, United Kingdom and Korea.

2.3 As these cigarettes had been illegally imported into India by way of smuggling without valid documents and was being illicitly transported. The cigarettes and phool jhadus were seized by the officers along with the vehicle used for transportation of the goods.

2.4 After completion of inquiries/investigations, show cause notice dated 13.04.2022 was issued to the appellant asking them to show cause as to why:-

> *"a) 11,40,000 sticks of seized foreign origin cigarettes valued at Rs.1,71,00,000/-(Rupees One Crore Seventy One Lakhs only) should not be confiscated under Section 111(b), (c), (e), (f). (h), (1) of the Act read with Section 7 of COTPA, 2003.*
>
> *b) The Truck(container) bearing registration No. NL-01-AE-8342 valued at Rs.13,00,000/- (Rupees Thirteen Lakhs only) should not be confiscated under the provisions of Section 115(2) of the Act.*
>
> *c) Penalty should not be imposed on Shri Chotu Ram (Noticee No.1), Shri Laxminarayan (Noticee No.2), Shri Hira Singh, Care Taker-of M/s Star International Exim (Noticee No.3), Mrs. Nisha Devi, Proprietor of M/s Star International Exim (Noticee No.4), Mrs. Prismiti Timungpi, Proprietor of M/s Serika Enterprise (Noticee No.5), Shri Vijay Shaw (Noticee No.6), M/s DIAL Logistics Pvt. Ltd. (Noticee No.7), Shri Raju (Noticee No.8) and "To whomsoever it may concern" (Noticee No.9) under Section 112(b) of the Act for their acts of omission and commission that has rendered the goods liable for confiscation."*

2.5 The said show cause notice was adjudicated as per the Order-in-Original referred in para 1.2 above.

2.6 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.7 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Nagendra Krishna, Advocate for the appellant and Shri Manish Raj, Authorized Representative for the revenue.

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

4.2 For upholding Order-in-Original imposing penalty upon the appellant, impugned order records as follows:-

> *"5.2 Now coming on the next issue of imposition of penalty upon the appellants. In this context, I find that as per the statement of Shri Hira Singh (appellant no. 1), he ordered for phool jhadu from Shri Raju and when asked about Raju he became ignorant about him and again when asked about the consigner M/s Serika Enterprises, Assam, he yet again expressed his unawareness about the consigner and similarly he did not provide any information about the transporter or driver of the truck. Thus, it appears that the appellant was trying to emphasize that even though he was the consignee in the instant matter but he didn't know the seller of the goods, its transporter or the agent through whom he had made the purchase. From the foregoing, it is evident that the appellant had intentionally avoided disclosing any material. fact of the matter. Further, although the appellant did not know anybody involved in any way in this transaction, he was not required to pay even a single penny for this deal not even in advance also. Apparently, such things do not exist in business world and there is nothing but a cooked story presented by the appellant to save himself from the clutches of law. This is further substantiated by the fact that the invoice of the phool jhadu recovered didn't match with the consignment of phool jhadu recovered from the vehicle. The invoice issued in his firm's name, recovered with the impugned goods was for 160 bundles of phool jhadu but only 107 bundles of phool jhadu were recovered*

from the vehicle. Obviously, the phool jhadu has deliberately been used to cover up the smuggling of impugned foreign origin cigarettes and the consignee, Shri Hira Singh (caretaker of M/s Star International Exim) had knowingly involved himself in this illegal act of smuggling. In view of above, I find that the appellant has correctly been penalized in terms of provisions of Section 112(a) & (b) of the Act. The appellant no. 2 is the consignee in the instant case. It was her responsibility to ensure that the name and documents of her business are not misused in any illegal activity but she failed to do so. Therefore, the appellant no. 2 has also rendered herself for penalty in terms of provisions of Section 112(a) & (b) of the Act.

5.3 In view of above facts, records and circumstantial evidences, I find that the appellants are the owner of the seized foreign origin cigarettes and planned the smuggling of the seized foreign origin cigarettes in connivance with the other noticees.

5.4 All this amply proves their guilty mind and their involvement as an abettor of smuggling. It, thus, conclusively establishes that the appellants have committed an offense under the Customs Act for which they have been correctly been penalized in terms of provisions of Section 112(a) & (b) of the Customs Act, 1962 and keeping in mind overall facts of the case, I find that the quantum of penalty is just and appropriate and do not wish ti interfere with that."

4.3 I find that appellant has order for the phool jhadus which were being transported by the said vehicle which has been seized. The consignment was duly supported by the invoice and e-way bills. On comparison with the invoices the goods found were some short from the actual quantity (instead of 160 bundles 107 bundles found). Apart from the above consignment of phool jhadus, certain cigarettes of foreign origin brand were also found loaded in the same vehicles. However, I do not find any manner by which cigarettes are loaded/ transported to be attributed to the present appellant, who is neither transporter nor owner of the vehicle or in-charge of the vehicle.

4.4 As no connection could be established between appellant and illicit goods i.e. foreign origin cigarettes, I do not find any merits in the penalties imposed on the appellant. In case of Kiran S Dixit [2014 (301) ELT 337 (T-Bang)] Bangalore Bench held as follows:

> ***"5.****The extracted portion of the statement shows clearly that the appellant gives containers on request made by importers/exporters; in the case of container, the appellant does not require to be informed of what is contained in the container; the appellants have deployed surveyors in different places. It i the responsibility of the surveyors to receive the empty containers back from the importers, handing over the empty containers for export to the party on production of the Delivery Order, receipt of stuffed containers duly sealed by the Customs on proper documents. The appellants do not exercise control over transportation of containers. The only aspect that is verified when the container is handed over back is whether it is damaged or not. Once the container is not damaged, it again enters into the trading channels for stuffing and destuffing and moves from place to place. After going through the statement of the appellant and the circumstances under which the container has been intercepted, I find that there is no evidence to show that the appellant had actually assisted in loading red sanders or tampering the container or they were even aware that red sanders had been filled into the container somewhere on the way until the container was recalled and examination was conducted. Under these circumstances, in this case, apparently penalty has been imposed on the appellant on the ground that he has abetted in stuffing and attempted export of red sanders in the container. Abetment means a positive act on the part of the appellant and as can be seen from the facts and circumstances,*

there is no evidence forthcoming to show that the appellant had given any assistance in the attempted export of red sanders. In my opinion, negligence on the part of the appellant has not been proved by the Revenue. Under these circumstances, a penalty imposed on the appellant has to be set aside and the same is set aside. In the result the stay application as well as appeal are allowed."

4.5 In the case of Radhey Shyam [2017 (355) ELT 467 (T-Del)] Delhi Bench has observed as follows:

"7.*It has been submitted on behalf of CONCOR as well as various functionaries that they cannot be held responsible for the fraud played by some unscrupulous elements in their attempt to smuggle out contraband. They have pleaded that the documents on the basis of which the container was railed out have been proved to be fabricated. It has further been submitted that total number of containers being booked on daily basis is quite substantial and verifying the Let Export Orders on the basis of e-mail from Customs was impractical. Accordingly, it has been prayed that the penalties may be set aside.*

8.*We have carefully examined the plea made by CONCOR and its employees. We note that during the course of investigation undertaken by the Customs authorities, nothing has been revealed on record to indicate any part played by the employees of CONCOR in the alleged smuggling of contraband. The ld. Commissioner in the impugned order has held that the railing out of container should not have been allowed since the e-mail sent by Customs CONCOR did not mention the let export order covering the present container. However, we find a lot force in the submission of CONCOR that the no. of containers booked on daily basis is quite large and it is practically difficult to co-relate the list of let export orders sent by e-mail by Customs with the containers booked and subsequent railing out of containers manually.*

In any case, it has been established that the documents indicating the let export order based on which the container was railed out were fraudulent and fabricated. Consequently, the custodian i.e. CONCOR as well as its employees cannot be faulted for allowing such let export of the container."

4.6 In case of Niles Shiyani [2024 (387) E.L.T. 626 (Tri. - Ahmd.)] Ahmedabad bench has observed as follows:

"8.5*In the above background, it is to be held that documentary evidences viz. stuffing of cargo in form of Annexure/examination report verified and signed by the central excise officers and verification of the shipping bill by the officer of Custom would prevail over the aforesaid oral statements. Consequently, no case of mis-declaration can be said to have been established on the part of appellant. Red Sanders have been found from the same container bearing No. GATU 8007720 and seal bearing No. TAS278658 and Excise Seal No. 0031757 found to be intact, is evidence of occurrence of illegal attempt to export red sanders, however, person who carried out the said act is not identified; particularly, in view of fact that penalty has also been imposed on person called Shailesh from Chennai who is stamped as kingpin in export of red sanders, however, investigation could not trace him.*

8.6*It is also observed that no evidence put forth as regards antecedents of the exporter of irregular exports in the past, nor there is any evidence of appellant's role in procurement of red sanders; as such there is no evidence of appellant's connection with such activities.*

8.7*Since the role of the appellant in the illegal attempt to export red sanders is not established with cogent evidence, penalty upon appellant, imposed under Section 114(i), is liable to be set aside."*

4.5 However, as I find that the phool jhadus were being used for concealing ilicit cigarettes being imported and the same have been rightly confiscated and released against redemption fine.

4.6 As I am no where concern with any other appellant in the present appeal the order should be restricted to the penalties imposed upon the present appellant, impugned order is modified accordingly.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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