CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60603 of 2019

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2302-2304-2019 dated 24.04.2019 passed by the Commissioner (Appeals), CGST, Ludhiana]

M/s Aryan International **......Appellant**
Dhandari Khurd, Focal Point Extension,
Ludhiana, Punjab

VERSUS

Commissioner of Customs, Ludhiana **......Respondent**
Customs House, ICD GRFL, G.T. Road,
Sahnewal, Ludhiana, Punjab

WITH

Customs Appeal No. 60604 of 2019

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2302-2304-2019 dated 24.04.2019 passed by the Commissioner (Appeals), CGST, Ludhiana]

Vikas Garg **......Appellant**
C/o M/s Aryan International
Dhandari Khurd, Focal Point Extension,
Ludhiana, Punjab

VERSUS

Commissioner of Customs, Ludhiana **......Respondent**
Customs House, ICD GRFL, G.T. Road,
Sahnewal, Ludhiana, Punjab

APPEARANCE:

Mr. Naveen Bindal and Mr. Bharat Jain, Advocates for the Appellants

Mr. Anurag Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60526-60527/2026

DATE OF HEARING: 15.05.2026
DATE OF DECISION: 13.08.2026

S. S. GARG :

These two appeals are directed against a common impugned Order-in-Appeal No. LUD-EXCUS-001-APP-2302-2304-2019 dated 24.04.2019 passed by the Commissioner (Appeals), CGST, Ludhiana. By the said order, the learned Commissioner (Appeals) disposed of three appeals, two filed by the Appellants and one filed by the Revenue, against the Order-in-Original dated 31.10.2017.

1.1 By way of the impugned order, the learned Commissioner (Appeals) rejected the appeals of both the Appellants and allowed the appeal of the Revenue, enhancing the penalty to ₹2.5 Lakh each on M/s Aryan International (‘Appellant No.1’) and Shri Vikas Garg (‘Appellant No.2’).

1.2 Since a common impugned order is under challenge, both appeals are being taken up together for disposal. For the sake of convenience, the facts are being drawn from Appeal No. C/60603/2019 filed by the Appellant No.1.

2. Briefly stated facts of the case are that the Appellant No.1 is a manufacturer-exporter who exported 'Gate/Door Leaves and Gate/Door Wheels' vide ARE-1 No. 7 dated 18.05.2015 on payment of duty amounting to ₹3,80,052/- on an assessable value of ₹30,40,417/-, under a rebate claim as provided under Rule 18 of the Central Excise Rules, 2002.

2.1 Shipping Bill No. 9625626 dated 18.05.2015 was filed at ICD, Ludhiana, and after due examination, the Customs authorities permitted export of the goods on 20.05.2015. The ARE-1 was duly endorsed by the Customs authorities certifying the export of the said goods.

2.2 Subsequently, acting on an intelligence, the export goods of the Appellant were put on hold at Pipavav Port. Thereafter, the Appellant applied for the provisional release of the goods, which was allowed by the competent authority vide order dated 21.08.2015.

2.3 On completion of the investigation, the Department issued a Show Cause Notice dated 07.01.2016 to the Appellant proposing the rejection of the declared FOB value of ₹31,39,582/- on the ground that the Appellant had attempted to export the goods by resorting to overvaluation with the intent to fraudulently avail higher export incentives, namely Duty Drawback and MEIS benefits, by suppressing material facts.

2.4 After following the due process, the Adjudicating Authority, vide the Order-in-Original dated 31.10.2017, imposed a redemption fine of ₹50,000/- under Section 125 of the Customs Act, 1962. Further, penalties of ₹50,000/- and ₹25,000/- were imposed under Section 114 of the Customs Act, 1962 upon Appellant No.1 and Appellant No.2 respectively; however, no penalty was imposed under Section 114AA of the Act.

2.5 Aggrieved by the said order of the Adjudicating Authority, both the Appellants as well as the Department preferred cross-appeals before the Commissioner (Appeals). The learned Commissioner (Appeals), vide the impugned Order-in-Appeal, dismissed the appeals filed by the Appellants and allowed the Revenue's appeal, enhancing the penalty to ₹2.5 Lakh each on Appellant No.1 and Appellant No.2. Hence, the Appellants have preferred the present appeals before us.

3. Heard both sides and perused the material on records.

4. The learned Counsel for the Appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.1 He further submitted that the authorities below have erroneously relied upon the alleged recovery of parallel invoices or pro-forma invoices (either in electronic or physical form) and on the alleged confessional statement of Shri Vikas Garg, partner of the firm. He further contended that none of the above relied-upon materials are sufficient to prove the charge of overvaluation regarding the impugned consignment exported vide Shipping Bill No. 9625626 dated 18.05.2015 with intention to fraudulently avail irregularly higher amount of export incentives viz. duty drawback and MEIS benefit. He also submitted that the Department has not placed on record the parallel invoices on the basis of which, the case has been made against the Appellants, therefore, the same cannot be made basis for calculating the valuation.

4.2 He further submitted that though no parallel invoices or pro-forma invoice relating to goods exported was found by Revenue, but still the Revenue chose to seize the impugned export consignment by relying upon "other" parallel invoices or pro-forma invoices (relating to different consignments) allegedly resumed from the premises of Appellant. He further submitted that various relied upon parallel invoices or pro-forma invoices as mentioned in Table-4 of Show Cause Notice, the learned Authorities ought to have considered that these are of date subsequent to Shipping Bill dated 18.05.2015, viz. S. No. 2, 7, 22, 23, 24 & 26 of Table-4 of Show Cause Notice; some of these relied upon documents relates to another firm i.e., Vikas Industries, viz. S.No. 16, 22 & 23 of the Table-4 of the Show Cause Notice. He also submitted that there is no parallel invoice or pro-forma invoice relied upon or available in respect of S. No. 1, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 27 & 28 of Table-4 of Show Cause Notice; these relied upon parallel invoices or pro-forma invoices as mentioned in Table-4 of Show Cause Notice are of date much earlier to Shipping Bill dated 18.05.2015 viz. S. No. 3, 4, 15 & 16 of Table-4 of Show Cause Notice. He further submitted that relied upon evidences which pertain to earlier period, cannot be made basis for alleged overvaluation of impugned export consignment when there is no relevant or specific document is available in support of the allegation of the Revenue.

4.3 He further submitted that the proper course of action for the investigating officer was to conduct a market inquiry and verify the contemporaneous export prices of identical or similar goods exported by other suppliers; however, the investigating authorities failed to conduct any market inquiry to compare the value of the disputed export consignment, and no contemporaneous export price was brought on record. He also urged that there is absolutely no evidence or even an allegation on record to show any financial flow-back of funds from the foreign buyer to the Appellant. He also submitted that it is a settled position of law that the transaction value declared in the Shipping Bill cannot be discarded without lawful, cogent, and justifiable reasons, and the rejection of a declared price is legally unsustainable in the absence of contemporaneous export data.

4.4 He further submitted that the entire allegation against the Appellants pertains to an alleged overvaluation with an intent to avail export incentives amounting to a mere ₹19,939/- approximately. He contended that despite such a negligible incentive amount, the learned Commissioner (Appeals) imposed an exorbitant penalty of ₹3 Lakh (₹50,000 u/s 114 + ₹2.5 Lakh u/s 114AA) on Appellant No.1 and ₹2.75 Lakh (₹25,000 u/s 114 + ₹2.5 Lakh u/s 114AA) on Appellant No.2, which is wholly harsh, excessive and grossly disproportionate to the alleged offence. He also argued that the redemption fine of ₹50,000/- is legally unsustainable, being highly excessive and grossly disproportionate to the alleged offence.

4.5 As regards the separate penalty imposed on Appellant No.2 (Shri Vikas Garg) in Appeal No. C/60604/2019, the learned Counsel submitted that it is a well-settled position of law that no separate personal penalty can be imposed upon a partner when a penalty has already been levied upon the partnership firm for the very same alleged act or omission. He contended that since a partnership firm is not a distinct legal entity separate from its partners, dual penalties are legally impermissible. He, therefore, prayed that the separate penalty imposed upon Appellant No.2 is unsustainable in law and deserves to be set aside. To support this submission, he relied on the judgment of the Hon'ble Punjab & Haryana High Court in the case of ***Vinod Kumar Gupta vs. CCE – 2013 (287) E.L.T. 54 (P&H)***.

5. On the other hand, the learned Authorized Representative for the Revenue reiterated the findings of the impugned order.

6. We have considered the submissions made by both sides and perused the material available on record. We note that the following two issues fall for our consideration in the present appeals:

(i) Whether the value of the exported goods declared by the Appellant No.1 was rightly rejected by the authorities below on the ground of overvaluation?

(ii) Whether a separate personal penalty can be legally sustained against Appellant No.2 (the partner) when a penalty has already been imposed upon the partnership firm for the same offense?

7. We find that the entire case of the Revenue is anchored upon certain parallel invoices/pro-forma invoices recovered during the search conducted by the Department at the premises of the Appellant. However, a bare perusal of Table-4 of the Show Cause Notice makes it abundantly clear that these parallel invoices do not relate to the disputed Shipping Bill No. 9625626 dated 18.05.2015; rather, they pertain to an entirely different, past period. We note that these invoices relate to different consignments and have no nexus with the specific consignment in dispute. In the absence of any specific parallel invoices placed on record concerning the impugned consignment, we are of the view that the charge of overvaluation

cannot be sustained merely on the basis of invoices belonging to other past consignments. Furthermore, the Department failed to verify the contemporaneous export price of identical items exported by other suppliers, nor did they conduct any market inquiry to compare the value of the disputed export consignment. We also find that there is absolutely no evidence or even an allegation on record to show any financial flow-back of funds from the foreign buyers to the Appellant. Therefore, rejecting the declared transaction value on the basis of extraneous parallel invoices is legally unsustainable, as it is a settled position of law that the transaction value cannot be discarded in the absence of contemporaneous export data or cogent proof of manipulation.

8. As regards the imposition of personal penalty on the partner (Appellant No.2), we find that it is a well-settled principle of law that no separate penalty can be imposed on a partner when a penalty has already been levied upon the partnership firm for the same offense. In this regard, we place reliance upon the judgment of the Hon'ble Punjab & Haryana High Court in the case of ***Vinod Kumar Gupta*** *(supra),* wherein the Hon'ble High Court held that a partnership firm is not a distinct legal entity separate from its partners under the law, and once the firm has already been penalized then imposing a separate penalty on the partner for the same infraction amounts to double jeopardy and is legally impermissible. Relevant findings of the Hon'ble High Court are as under:

> "**9.** Having heard learned counsel for the parties, we are of the considered opinion that proprietorship firm or proprietor thereof cannot be treated as two different legal entities.

Partnership firm is a firm in mercantile usage, however, penalty imposed on the proprietorship or partnership firms would mean penalty on the proprietor or partners thereof, therefore, imposition of penalties one on the proprietorship firm and second on the proprietor would amount to imposition of penalty twice, which cannot be sustained in the eyes of law.”

10. Learned Single Judge of Calcutta High Court in the case of Tarak Nath Sen and Others v. Union of India and Others, AIR 1975 Calcutta 337, has observed as under:-

> *17. Thus, these decisions make it clear that although a firm in mercantile usage has a personality of its own, strictly in the eye of law, it is not a legal entity like a natural person. Therefore, the rights and obligations of a firm are really rights and obligations of the individual partners of the firm. In the instant case, according to the findings made by the Additional Collector of Customs in his adjudication order the petitioners 2 to 4 carrying on business as a partnership firm had contravened provisions of the Customs Act and the Gold Control Rules and were liable for penalties under Section 112 of the Customs Act and under Rule 126-L(16) of the Defence of India (Gold Control) Rules Therefore, no exception can be taken to imposition of penalties individually upon them. But since the firm is not a legal entity and Section 140 of the Customs Act was inapplicable to the adjudication proceeding, the Additional Collector of Customs by imposing penalties also upon the firm has really twice punished the petitioners Nos. 1 to 4 for the same sets of acts. Therefore, although I propose to sustain the imposition of penalties under the Customs Act and the Defence of India (Gold Control) Rules upon the petitioners 2 to 4, the penalties of fine imposed upon the petitioner No. 5 firm should be quashed.*

11. Having perused the observations of learned Single Judge of Calcutta High Court in the case of Tarak Nath Sen (supra), we find that a firm in mercantile usage is the firm in its own, strictly in the eye of law, it is not a legal entity like a natural person. Therefore, the rights and obligations of a firm are really rights and obligations of the individual partners of the firm, therefore, penalty imposed on the firm would amount to imposition of penalty to the proprietor or the partner, as the case may be, therefore, imposition of penalty on the proprietor independently would not be legal.”

9. Further, we are of the opinion that the penalty imposed on the firm (Appellant No.1) by the learned Commissioner (Appeals) is quite harsh, excessive, and highly disproportionate to the nature of the alleged offense, especially considering that the export incentive involved is a mere ₹19,939/-.

10. We also note that while the parallel invoices recovered do not relate to the disputed consignment, the records indicate that the Appellant's firm had generated parallel/pro-forma invoices in the past. Therefore, to meet the ends of justice, we uphold the penalty of ₹50,000/- as was originally determined by the Adjudicating Authority under Section 114 of the Customs Act, 1962 against the firm (Appellant No.1). However, we completely drop the enhanced penalty of ₹2.5 Lakh each imposed under Section 114AA of the Act on both the firm (Appellant No.1) and the partner (Appellant No.2), and set aside the penalty under Section 114 on Appellant No.2 in view of our findings in Para 8 supra.

11. Further, we also find that the redemption fine of ₹50,000/-, imposed by the Adjudicating Authority and upheld by the learned Commissioner (Appeals), is liable to be set aside. Since the goods were already permitted to be exported and are not available for confiscation, and given that the charge of overvaluation for this specific consignment fails, the invocation of Section 125 of the Customs Act, 1962 is not warranted under the present facts and circumstances. Accordingly, the redemption fine is set aside.

12. In light of our above observations, we pass the following order:

- We uphold the penalty of ₹50,000/- (Rupees Fifty Thousand only) under Section 114 of the Customs Act, 1962 on Appellant No.1 (M/s Aryan International).
- We drop the penalty of ₹2.5 Lakh imposed under Section 114AA of the Act on Appellant No.1.
- We set aside and drop the penalties imposed under Section 114 and Section 114AA of the Act on Appellant No.2 (Shri Vikas Garg).
- We set aside the redemption fine of ₹50,000/- imposed under Section 125 of the Customs Act, 1962.

13. In result, Appeal No. C/60603/2019 is partially allowed and Appeal No. C/60604/2019 is allowed on the above terms.

(Order pronounced in the open court on 13.08.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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