CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO.III

Customs Appeal No. 41551 of 2014

(Arising out of Order-in-Original No.24342/2014 dated 28.02.2014 passed by Commissioner of Customs, Chennai)

Commissioner of Customs **....Appellant**
Chennai II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

Versus

M/s. Vishal Impex, **... Respondent**
(Pro. Shri Vishal Janak Agarwal),
No.414, Empire State Building,
Ring Road, Surat-395 002.

APPEARANCE:

Shri Sanjay Kakkar, Authorized Representative for the Appellant-Revenue
None for the Respondent-Assessee

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40792/2025

DATE OF HEARING: 07.04.2025
DATE OF DECISION: 04.08.2025

Per: Shri P. Dinesha

The details of the date of Advance Authorization license as recorded in the Order-in-Original are in the year 2008 and imports as reflected in the impugned order are also in 2008.

2. The case of the Revenue is that the impugned order has been passed by the Adjudicating Authority wherein he has confirmed the duty demand and penalty under Section 112(a) of the Customs Act, 1962 on the appellant but has not imposed penalty under Section 114A ibid. It is their case that the Adjudicating Authority has failed to impose penalty under Section 114A even though the Importer-Respondent is held liable to pay duty, which is determined under Section 28 ibid; that penalty under Section 114A is mandatorily leviable in addition to penalty under Section 112(a) ibid. In this regard, the Revenue has placed reliance on decision of Supreme Court in the case of ***UOI vs Rajasthan Spinning and Weaving Mills*** 2009(238) ELT 3 SC.

3. We find that despite the Service of hearing notices, the Respondent – Assessee has not appeared before us and nor is there in request and hence, considering the fact that sufficient opportunities have been afforded to the Assessee, we proceed to conclude the proceedings after hearing the Appellant-Revenue.

4. We have heard Shri Sanjay Kakkar, Learned Deputy Commissioner for the Appellant – Revenue and we have perused the documents placed on record including the impugned order. The only issue that needs to be addressed by us is, "whether the Adjudicating Authority is correct in not imposing penalty under Section 114A ibid?

5. An identical issue was considered by the other Bench and after hearing the Bench has passed an order holding that there was willful suppression of facts on the part of the importer which warranted the levy of rent under Section 114A of the Act. Relevant portion is extracted for reference.

6. Section 114A of the CA 1962 is extracted below for ease of reference.

Penalty for short-levy or non-levy of duty in certain cases.

114A. 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 a 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 per cent 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. Explanation.--For the removal of doubts, it is hereby declared that—

i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under subsection (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

(emphasis added)

6.1 Thus it is seen that Section 114A ibid deals with non-levy or short levy of customs duty arising on account of the reason of collusion or any willful mis-statement or suppression of facts. From the language of the said Section, it is seen that the penalty leviable under the said provision is a statutory penalty. The phrase used is "**<u>shall</u>** also be liable to pay a penalty equal to the duty or interest so determined". The moment it is found that a person who by reason of collusion or any wilful mis-statement or suppression of facts is liable to pay the duty or interest as determined under sub-section (8) of section 28, he **<u>shall</u>** also be liable to pay a penalty. The penalty is automatic, and deterrence is the main theme of object behind the imposition of the said penalty so that the parties committing a blame worthy act are deterred from securing a dishonest advantage or perpetuating an unjust gain. Further, there is no discretion with the assessing officer either to levy or not to levy and/or to levy any penalty lesser than what is prescribed/mentioned in Section 28(8).

6.2 The Hon'ble Supreme Court in the case of **UOI Vs Dharmendra Textile Processors** [2008 (231) ELT-3],

> after referring to the decision of the Apex Court in the case of **Chairman, SEBI Vs Shriram Mutual Fund & Anr** [2006(5) SCC 361], observed that when the term used in the section is "shall be leviable," the adjudicating authority will have no discretion regarding quantum of penalty, as fixed penalty has been prescribed in the law. This being so the appeal filed by revenue succeeds.
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> 7. In the light of the discussions above, we modify the impugned order to impose a penalty on the respondent M/s. Kalp Impex, under section 114A of CA 1962, equal to the duty or interest so determined, in the light of the duty demand having been made/ confirmed under Sec. 28(8) of the CA 1962 and the demand/ determination of the customs duty evaded was by reason of willful suppression of facts on the part of the importer. The appeal is disposed of accordingly.

6. In view of the above, we modify the impugned order and allow the Revenue's appeal to the extent.

7. Accordingly, the appeal is disposed of on the above lines.

(Order pronounced in open court on 04.08.2025)

sd/- sd/-

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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