

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No. 40237 of 2015

(Arising out of Order in Appeal C. Cus. II No. 142/2014 dated 31.12.2014 passed by the Commissioner of Customs (Appeals – II), Chennai)

Paras H Shah

Managing Director
M/s. Neotric Infomatique Ltd.
Mumbai – 400 013.

Appellant

Vs.

Commissioner of Customs

Chennai Import Commissionerate
Customs House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

And

Customs Appeal No. 40238 of 2015

(Arising out of Order in Appeal C. Cus. II No. 141/2014 dated 31.12.2014 passed by the Commissioner of Customs (Appeals – II), Chennai)

Shri Balraj Virdi

Deputy General Manager
M/s. Neotric Infomatique Ltd.
Mumbai – 400 013

Appellant

Vs.

Commissioner of Customs

Chennai Import Commissionerate
Customs House, 60, Rajaji Salai
Chennai – 600 001

Respondent

APPEARANCE:

Shri Madan G, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorized Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS. 40810 & 40811/2025

Date of Hearing : 14.02.2025

Date of Decision: 12.08.2025

Per M. Ajit Kumar,

These appeals arise out of Orders in Appeal C. Cus. II No. 142 & 141/2014 both dated 31.12.2014 passed by the Commissioner of Customs (Appeals – II), Chennai) (impugned order).

2. Brief facts of the case are that the appellants herein are Managing Director and Deputy General Manager of M/s. Neoteric Informatique Ltd. The appellant-company imported 'External and Internal TV Tuners' from China which appeared to be mis-declared as 'accessories of computer', to evade payment of duty and were classified under Customs Tariff Heading (**CTH**) 8473 3099 @ nil rate of BCD by availing benefit of exemption Notification No. 24/2005 dated 1.3.2005. Customs Authorities were of the opinion that the goods merited classification under CTH 8528 7100 which attracts duty @ 10% BCD. After issuance of Show Cause Notice (**SCN**), the Ld. Adjudicating Authority rejected the declared classification and reclassified the goods under Tariff Item 8528 7100 and among other things imposed a penalty of Rs.5,00,000/- each on the appellants herein under sec. 112(a) of the Customs Act, 1962. The appeal filed by the company stood abated as per this Tribunal's Final Order No. 40086 to 40088/2025 dated 15.1.2025, since the Company had gone into liquidation and NCLT had accepted the Resolution Plan. The present appeals are against the imposition of penalty under sec. 112(a) of the Customs Act, 1962 against both the appellants.

3. Shri Madan G, Ld. Counsel appeared for the appellants and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative appeared for the respondent.

4.1 The Ld. Counsel for the appellants Shri Madan G submitted that;

A) A penalty cannot be imposed both on the company and the appellant for the same alleged act of misdeclaration.

B) There is no evidence establishing their (appellants), role in any alleged suppression or misdeclaration.

C) Without prejudice, there is no misdeclaration, as the goods were rightly classified under CTH 8473. In any case, when classification is based on a bona fide belief, any claim for exemption benefits on bona fide grounds cannot justify the department's invocation of the extended period of limitation. The matter is covered by the decision of the Hon'ble Mumbai Tribunal in company's own case in Neotric Informatique Ltd. Versus Commr. of Cus. (Import), Nhava Sheva, reported in 2015 (318) E.L.T. 701 (Tri Mumbai).

Therefore, the Ld. Counsel prayed that the impugned order may be quashed in its entirety.

4.2 The learned AR Smt. Anandalakshmi Ganeshram, reiterated the findings in the impugned order.

5. Heard both sides and perused the material placed on record in the appeal. We take up the point of law raised by the appellant first.

6. **A penalty cannot be imposed both on the company and the appellant for the same alleged act of misdeclaration.**

6.1 The issue is no longer res integra. Partners, directors, and managers who direct the company's actions are regarded by law as representing the mind and will of the company. The Hon'ble Supreme Court in the case of **Prakash Metal Works Vs Collector of C.Ex., Ahmedabad** [2007 (216) E.L.T. 660 (S.C.)], upheld imposition of penalty on partner as well as firm. The Hon'ble High Court of Gujarat

in **VENKATARAMAN T. PAI Vs. C.R. SHAH** [1996 (81) E.L.T. 467 (Guj.)], in a matter under the Central Excises and Salt Act, 1944 held;

“At this stage I would like to quote Section 9AA to appreciate the remaining contentions :

Section 9AA : Offences by Companies. - (1) Where an offence under this Act has been committed by a Company, every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of the business of the Company, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the Company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purpose of this section :

(a) “Company” means any body corporate and includes a firm or other association of individuals; and

(b) “Director” in relation to a firm means a partner in the firm.

The Section quoted hereinabove, clearly indicates that what was till then an offence by a Company only would be an offence not only by the Company but also by the persons who are running the affairs of the Company and those persons being one specified in Section 9AA. The moment this aspect is borne in mind it is quite clear that Section 9AA is not a procedural section or a Section describing rule of evidence merely shifting the burden of proof. It introduces criminality in relation to the persons who are in charge of the affairs of the Company along with the Company. In other words, it is a substantive law and not a procedural or adjectival law.”

We find that section 9AA of the Central Excises and Salt Act, 1944, is similarly worded to section 140 of the Customs Act, 1962 and hence

the above portion of the judgment would be applicable to a case under the Customs Act too.

6.2 Further in **Ravindranatha Bajpe Vs Mangalore Special Economic Zone Ltd.** [AIR 2021 SUPREME COURT 4587 / AIRONLINE 2021 SC 779], the Apex Court in a case involving the principle of criminal jurisprudence, which is more stringent, has held that an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent.

6.3 Considering the law stated in the judgments above, we find that a penalty can be imposed both on the company and its employees for the same alleged act of misdeclaration, if the situation so warrants.

7. **There is no evidence establishing the appellants role in any alleged suppression or misdeclaration.**

7.1 We find that the SCN narrate the alleged misconduct of the appellants through their own statements recorded under section 108 of the Customs Act 1962. No other evidence has been relied upon. The concerned paragraphs are reproduced below as it would help understand the role of the appellants:

“4. A Statement from **Shri Balraj Viridi, Deputy General Manager** (Supply Chain) of M/s. Neoteric Informatique Ltd was recorded on 22.01.2011 under Section 108 of Customs Act, 1962 wherein he has inter alia stated that he has been working in the company for the last 10 years and he reports to the C.E.O of the company; that he heads the supply chain department which comprises of Imports, logistics & Operations; that their company is into IT distribution having 37 branches in India; that they distribute products like T.V. Tuners, keyboard, Mouse, Motherboard, Laptops, etc.; that they are distributors for major brands like Apple, Lenovo, Logitech, Umax, Dell, Wipro and others; that they are importing from far eastern countries like Singapore, Hong Kong and China; that they clear their goods from Mumbai, Delhi, Chennai and Kolkata; that they clear their import shipments through M/s. Blessing Cargo Care Pvt. Ltd, Chennai; that he is heading the product procurement team which

decides on quantity to be ordered and based on that he places the order with their foreign suppliers; that once the deal is through and shipment is ready, the Import team arranges for the shipment into India; that he is aware of the Customs & Central Excise duty structure for their products; that he is empowered to take decisions regarding classification of goods imported by them; that he himself takes this decision as he is well versed with Customs Tariff. **He further stated that they have classified T.V. Tuner Box under Tariff Item 84733099, reason being that the product does the function of converting signals into data form for the computer and that this T.V. Tuner Box functions with the computer only and hence the same is classified under 84733099 as accessories of Computer.** He further stated that it does not do any value addition in the normal functioning of a computer. It also does not play any role in the storage, retrieval, or processing of the data in the computer apart from receiving T.V. Signals. On being asked he stated that the T.V. Tuner Box converts the transmission signals into data form to a computer as a data processing machine cannot take transmission signals directly because an automatic data processing machine takes data only in binary form and hence this product converts the transmission signals into binary data form for their ADP Machines. He has further stated that the T.V. Tuner does not enhance the functioning of the computer; that the VGA Card in the T.V. Tuner helps convert signals into binary data; that on being asked whether binary data can be stored in the computer for further processing and retrieval he replied that he was not very sound on this aspect and hence suggested asking their technical person Mr. Akshay Joshi, Executive Technical Training, of his firm.

5. A Statement from **Shri Paras H. Shah, Managing Director** of M/s. Neoteric Informatique Ltd was recorded on 02.02.2011 under Section 108 of Customs Act, 1962 wherein he has inter alia, stated that he leads the overall organization, focusing on finance, H.R, and overall administration of the organization; that he does not involve himself in the day to day operations; that he reviews business on periodic basis; that they are a distribution organization mainly distributing computer hardware & software across India through 37 branches, that they mainly distribute Apple, Lenovo, Logitech, Dell, Wipro and also Umax brand T.V. Tuner box. **He further stated that he is aware that the T.V. Tuner box is classified under Tariff Item 84733099; that their business manager is responsible for the purchase of goods and classification of imports is decided by the import team; that he is aware that they are availing the benefits of Customs Notification 24/2005 dated 1/3/2005; that since he is not technically conversant about the subject matter he has authorized Sri Balraj Viridi to clarify the technicality of the goods that he confirms that the statement given by Shri Balraj Vindi will be accepted by him;** that he also undertakes that if any duty liability arises they are ready to pay the same voluntarily.

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8. A second statement of **Shri Paras H. Shah, Managing Director** of M/s. Neoteric Informatique Ltd was recorded on 19/4/2011 wherein he reiterated that the statement given by him on 2/2/2011 is correct; that he takes the responsibility for any wrong doing by him and his colleagues resulting in any loss of Govt, revenue. **He further stated that he is taking full responsibility for the statement given by Shri Akshay Joshi, Executive, Technical Training, Shri Balraj Viridi,**

Deputy General Manager (Supply Chain) and Shri R. Ravichandran, CHA.” (emphasis added)

7.2 The finding in the OIO relevant to the appellants are at paras 22 and 23, and are extracted below:

“22. In view of the above it appears that M/s. Neoteric Informatique Ltd. the importer and Shri Paras H. Shah, Managing Director along with Shri Akshay Joshi, Executive, Technical Training, Shri Balraj Viridi, deputy General Manager, Supply Chain and Shri R. Ravichandran, CHA **had connived between them to willfully mis-declare and mis-classify the imported goods in the Bills of Entry filed by them to evade payment of appropriate Customs duty on the goods imported. It also appears that they had cleared goods through Custom House** (Seaport - Import), Chennai, under the Bills of Entry detailed in Annexure A attached. It therefore appears that the importer has thus short paid customs duty to the extent of Rs.24,20,131/- (Rupees Twenty four lakh Twenty thousand One hundred Thirty one only) owing to the willful mis-declaration and mis-classification of the description of the goods and suppression of the correct function and end-use. The said amount therefore appears to be recoverable from the importer under proviso to Section 28(1) along with interest under Section 28AB for the delay in payment of duty payable under the Customs Act, 1962 and the seized goods also appear to be liable for confiscation under Section 111(m) of the Customs Act, 1962. **It further appears that the importer has resorted to willful mis-declaration and mis-classification of the imported goods, that is TV Tuner cards Internal/external and suppression of facts with reference to correct classification in the bills of entry with an intention to evade payment of appropriate customs duty.** Therefore, it appears that the extended period of limitation under Section 28(1) of Customs Act, 1962 is invokable in this case. Further, the importer appears to be liable for penalty under Section 114A and/or Section 112 of the Customs Act, 1962.

23. **It also appears that M/s. Neoteric Informatique Ltd was the main beneficiary of evasion of duty as above. Shri Paras H. Shah, Managing Director of the importer company appears to be the key person behind the operation to mis classify the goods imported as also the main beneficiary.** It also appears that Shri Akshay Joshi, Executive, Shri Balraj Viridi, authorized representative of the company & Shri R. Ravichandran being CHA of the company, have actively connived with and provided assistance to M/s Neoteric Informatique Ltd and Shri Paras H. Shah to mis-classify the product TV Tuner Card and claim ineligible benefit of customs notification No.24/2005 dated 01/03/2005 for the purpose of assessment of the product TV Tuner cards Internal/external at the time of importation, and thus enabled them to evade customs duty on the imported goods., thereby rendering the imported goods liable for confiscation under section 111(m) ibid, and thereby each of them appears to be liable for penalty under Section 112(b) of the Customs Act, 1962.’

(emphasis added)

7.3 The impugned order alleges that Shri Paras H. Shah, Managing Director of M/s Neoteric Informatique Ltd, orchestrated the misclassification of imported goods for personal benefit, assisted by Shri Balraj Viridi and others. However, there is no evidence of such a conspiracy in the impugned order. Shri Paras H. Shah stated that he is aware that the T.V. Tuner box is classified under Tariff Item 8473 3099; that he is aware that they are availing the benefits of Customs Notification 24/2005 dated 1/3/2005: that since he is not technically conversant about the subject matter he has authorized Sri Balrai Viridi to clarify the technicality of the goods. Similarly, Shri Balraj Viridi, Deputy General Manager has given his reasons for having classified the T.V. Tuner Box under Tariff Item 84733099. He stated that the product does the function of converting signals into data form for the computer and that this T.V. Tuner Box functions with the computer only and hence the same is classified under CTH 8473 3099 as accessories of Computer. Both the appellants have thus given a reasonable response of their understanding of the classification of goods. That they may have erred is of no consequence to the issue at hand. Revenue has not been able to demonstrate a guilty mind. No mis-declaration is admitted or gleaned from the narration and the dispute is thus an interpretative one.

7.4 The SCN does not make any concrete allegations that any of the appellants knew that the goods were classifiable under CTH 8528 7100 but they have deliberately classified the same under CTH 8473 3099 to seek an undue tax advantage. While we do not seek to examine or endorse either of the classification headings here, but just because the importer had a different view about the classification of the goods does

not mean that the classification was mis-declared by the importer company and its staff. Classification of the goods is not a guessing game where the importer must guess correctly and declare in the Bill of Entry the classification that the Proper Officer will arrive on later or else he will be visited with a huge penalty. Or that every time the importer files a Bill of Entry, he must raise a doubt and seek clarifications from the Customs department so that the mind of the Customs officer is revealed and the importer avoids penalties, totally incognizant of the transaction costs that any delay would entail!

7.5 The importer is not an expert on Customs classification of goods as admitted by Shri Paras H. Shah and even if he was one, there is no reason why he should not logically arrive at a classification heading for the imported goods which does not match that of Customs officials. No intention to mis-declare or mis-classify can be suspected in such circumstances, unless it is demonstrated that a negative mental element was present and the classification of the goods was done in a malafide manner with total disregard to the Rules of Interpretation of the Tariff, which a conscientious businessman would not have made. Such evidence is missing.

7.6 A charge of willfully mis-declaration and mis-classification should not be lightly made. It was held by the Hon'ble Supreme Court in **Aban Loyd Chiles Offshore Limited and Ors. Vs Commissioner of Customs, Maharashtra** [(2006) 6 SCC 482 / 2006 (200) E.L.T. 370 (S.C.)], that the word "willful" preceding the words "misstatement or suppression of facts" clearly spells out that there has to be an intention on the part of the assessee to evade the duty. The OIO is totally bereft

of such a charge and hence the penalty imposed on the appellants must fail.

8. Considering that the appeals have been made only against the penalty imposed, we do not feel it necessary to examine the issue of classification of the goods. The part of the impugned order pertaining to the imposition of penalties on the appellants is set aside and the appeals are allowed. The appellants are eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 12.08.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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