

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Customs Appeal No. 40567 of 2016**

(Arising out of Order-in-Original No.43761/2015, dated 29.12.2015 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

**J Uthaman**

No.14, 2<sup>nd</sup> Cross, Halasuru  
Sri Yellammen Devi Temple Street  
Bangalore  
Karnataka 560 008

**.....Appellant**

***Versus***

**Commissioner of Customs**

Commissionerate II  
Custom House  
No.60, Rajaji Salai, Chennai 600 001

**...Respondent**

**WITH**

**Customs Appeal No. 40635 of 2016**

(Arising out of Order-in-Original No.43761/2015, dated 29.12.2015 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

**Air Cargo Helpers**

No. 512, Block A  
Knights Bridge Apartment  
Kundlahalli  
Bangalore 560 037

**.....Appellant**

***Versus***

**Commissioner of Customs**

(Export)  
Custom House  
No.60, Rajaji Salai, Chennai 600 001

**...Respondent**

**AND**

**Customs Appeal No. 40938 of 2016**

(Arising out of Order-in-Original No.43761/2015, dated 29.12.2015 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

**Commissioner of Customs**

Commissionerate II  
Custom House  
No.60, Rajaji Salai, Chennai 600 001

**.....Appellant**

***Versus***

**M/s. Laxmi Fabrics**

11/2, Sanjeeva Naik Lane  
Avenue Road  
Bangalore 560 002

**...Respondent**

**APPEARANCE:**

Shri B. Venugopal, Advocate for the Appellant  
Shri Chethan Kumar, Consultant for the Appellant  
Shri Anoop Singh, Authorised Representative for the Respondent  
Ms. J. Ragini, Advocate (Amicus Curiae)

**CORAM :****HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)****HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)****FINAL ORDER Nos.41346-41348/2025**

DATE OF HEARING: 24.07.2025

DATE OF DECISION:24.11.2025

**Per Ajayan T.V.**

These three appeals being interconnected have been heard together and are disposed of by this common order.

2. The brief facts are that Laxmi Fabrics, a proprietorship firm who had declared themselves as a manufacturer exporter is engaged in import of raw silk yarn and plain silk fabrics and in export of printed silk fabrics / made-ups. Laxmi Fabrics obtained advanced authorisation or Duty Exemption Entitlement Certificate (DEEC) and Duty Free Import Authorisations (DFIA) to import goods duty free. During the period 2009-2013, the firm imported several consignments of silk fabrics availing the benefit of applicable notifications and by utilising the AA / DEEC / DFIA licenses through Chennai Seaport. It made its exports through inland container Depot, Bangalore (ICD). Dri gathered intelligence that the firm was mis-using these licenses to avail the benefit of Notification No.96/2009-Cus and 98 /2009-Cus., both dated 11.09.2009 by importing duty free silk fabrics and yarn and diverting such imported goods to local market without using the same in manufacture and export of resultant products, and instead were exporting cheap rags by mis- declaring the export goods as printed silk fabrics / made-ups.
3. Based on the intelligence, officers of DRI, Bangalore intercepted a live export consignment submitted for export by Laxmi fabrics at CWC, ICD, Bangalore under Shipping Bill No.3540018, dated 18.01.2013 after customs clearance, and before the consignment was loaded for export.

On examination, finding the said consignment to be assorted use / old textile materials and made-ups of various sizes and colours, i.e. of 'rags', as against the 100% natural silk printed fabrics declared in the shipping bill and export invoice, it was seized. The investigation entailed searches and recording of statements of Shri Shyam Sunder Sureka, Proprietor of Laxmi Fabrics, as well as that of Shri Uthaman, Assistant Manager - Operations, Air Cargo Helpers, an appellant herein as well as that of Shri C P Ravindran, Branch Manager, of M/s Air Cargo Helpers; the said Air Cargo Helpers also being an appellant before this forum.

4. Consequently, a Show Cause Notice dated 19.07.2013 was issued alleging that Laxmi Fabrics had, with malafide intentions, obtained the aforesaid licenses and diverted the imported duty free raw silk yarn and plain silk fabrics to the local market for monetary consideration without utilising such duty free goods for the manufacture of goods which were required to be exported in terms of conditions imposed under the foreign trade policy. It was also alleged that the firm, with malafide intent, procured used / cut fabrics or rags and attempted to export the same mis-declaring them as 100% natural printed silk fabrics / made ups to show that it had met the export obligation. It was also alleged that the firm had created a trail of false documents to show that the duty free imported goods were sent for processing to either their own premises or to that of the supporting manufacturers. The SCN therefore alleged that the firm had misdeclared the live consignment of export goods submitted for export vide the aforementioned shipping bill and had also misdeclared the goods that had been exported during the period from January 2012 to January 2013 rendering these goods liable to confiscation under the provisions of the Customs Act, 1962, rendering the firm liable to imposition of penalties under various provisions of the Customs Act, 1962. The SCN also alleged that imported goods intended for diversion detained/seized in the course of investigation as well as the goods imported during the aforesaid period and diverted to local market were also liable to confiscation and the firm liable to be visited with attendant penalties under the provisions of the Customs Act *ibid*.
5. The SCN also alleged that Shri Uthaman, while working as Assistant Manager, Operations of Air Cargo Helpers, Customs House agents, has

actively involved himself in the violations of the provisions of the Customs Act, 1962 committed by Laxmi Fabrics which rendered the goods submitted for export by Laxmi Fabrics more particularly in case of shipping bills no.3540018 dated 18.01.2013, No.3525074 dated 17.01.2013 and no.3492427 dated 15.01.2013 liable to confiscation under Section 113 (d) and 113 (i) of the Customs Act and hence for his such acts of omissions and commissions, Shri J. Uthaman had rendered himself liable to penalty under Sec. 114 and or 114 AA of the Customs Act, 1962. The notice also alleged that Air Cargo helpers, Customs house agent of Laxmi Fabrics are liable to penalty under Section 114 and / or 114AA of the Customs Act 1962 for the acts of omissions and commissions as they allowed their employee Shri J Uthaman to provide CHA services to Laxmi Fabrics which resulted in the export of rags by Laxmi Fabrics in the guise of 100% natural silk printed fabrics / made ups which rendered the goods liable for confiscation under Section 113 (d) and 113 (i) of the Customs Act, 1962.

6. After due process of law, the Adjudicating Authority who confirmed the duty demands made on Laxmi Fabrics and imposed penalties as proposed in the SCN on the said firm, *interalia* imposed penalty of Rs. two lakhs under Section 114 and Rs. Two lakhs under Section 114 AA of the Customs Act, 1962 on the Appellant Air cargo Helpers, while penalties of Rs. one lakh under Section 114 and Rs. one lakh under Section 114 AA were imposed on the Appellant Shri J Uthaman.
7. Aggrieved by these penalties, both the appellants, having preferred their respective appeals, are before this Tribunal. The Department is also in appeal against the impugned order to the extent that the Ld. Adjudicating Authority had refrained from imposing redemption fine on the imported goods cleared by Laxmi Fabrics, on the ground that the goods are not physically available for confiscation.
8. We have heard Shri Chethan Kumar, Consultant who appeared for Air Cargo helpers, Shri B Venugopal, Advocate who appeared for Shri Uthaman and Shri Anoop Singh, Authorised Representative who appeared for Revenue.

9. Ld. Consultant appearing for the appellant CHA Air Cargo Helpers submitted that their employee Shri Uthaman had acted on his own for his personal gains and at no stage they had instructed him to attend the export of Laxmi Fabrics. They had terminated Shri Uthaman's services upon his role in the fraudulent transactions of Laxmi Fabrics was brought to their notice during investigation. They had derived no personal gains from Laxmi Fabrics and had enjoyed an unblemished record. The Ld. Consultant drawn attention to Section 114 of the Act and submitted that penalty under Section 114 of the Act is imposable only on any person who, in relation to any goods, does or omits to do any act which act or omission to render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act. The appellant is a partnership firm with the head office located in New Delhi, while the branch office located in Bangalore is headed by Shri C P Ravindran working as Branch Manager. Their clientele included many reputed companies over the last many years and the appellant has an unblemished record as CHA. The appellant's branch office at Bangalore, was operating since 2004 and no earlier incident of any omission or commission as a customs broker has been noticed or alleged by the customs department. The appellant in no way connected with either import or export by Laxmi Fabrics.
10. Ld. Consultant further submits that they had learned that unbeknownst to them, their employee Shri J Uthaman had attended to the work of Laxmi Fabrics and have filed several shipping bills in their name in the capacity of a 'G' Card Holder using the appellants CHA license number only during the investigation by DRI against Laxmi Fabrics. Laxmi Fabrics had never been their client and there wasn't any written agreement that had been entered with the said Laxmi Fabrics as is evident from the statement dated 06.02.2013 given by their Branch Manager Shri C P Ravindran. The SCN contained no allegation, much less documentary evidence, that they had derived any pecuniary benefits out of the transactions with Laxmi Fabrics. The SCN was devoid of any allegation that the appellant had abetted Laxmi Fabrics in their transactions with any malafide. The evidence placed on record in the SCN also demonstrated that the appellant had never entered into any agreement with Laxmi Fabrics and had no role in filing the shipping bills

on behalf of Laxmi Fabrics. The Adjudicating Authority, despite noting their submissions, had clearly over looked the same and is silent on the appellant's plea that they had not received any financial benefit from Laxmi Fabrics. While 47 shipping bills of Laxmi Fabrics were allegedly filed by the employee J. Uthaman over a period of one year, there is absolutely no evidence that the appellants were aware of such acts of their employee or that the transaction relating to Laxmi Fabrics had entered in the appellants record. The Ld. Consultant submits that the findings in the impugned OIO is speculative and unsubstantiated and hence the penalty imposed under Section 114 A is wholly attainable. Reliance was placed on the decisions in

- a) Neptune Clearing Agency Vs. Commissioner (2007 (212) E.L.T.97 (Tri.-Mumbai)
- b) Buhariwala Logistics Vs. Commissioner of Customs (2015 (326) E.L.T.170 (Tri.-Del)
- c) Commissioner of Customs Vs. Sohel Firoz Kazani (2015 (329) E.L.T.481 (Tri.-Mumbai)
- d) Marshall Machado Vs. Commissioner (2015 (330) E.L.T.334 (Tri.-Mumbai)
- e) Right Way Logistics Pvt. Ltd. Vs. Commissioner of Customs, Cochin (2024) 18 Centax 5 (Tri--Bang)

11. In so far as the penalty under Section 114AA of the Act the Ld. Consultant submits that the said provisions is imposable only in cases involved in fraudulent exports as made clear at para 65 of the 27<sup>th</sup> report of the Standing Committee on Finance. Considering the above, the penalty imposed on the customs broker under Section 114 AA of the Act was set aside by the Tribunal in the case of World Wide Cargo Vs. Commissioner of Customs, Bangalore (2022 (379) E.L.T. 120 (Tri. - Bang)
12. The Ld. Advocate appearing on behalf of Mr. Uthaman submitted that the penalty imposed on the appellant by the impugned order is without any basis. There is no evidence indicating the appellant's involvement in any manner either directly or indirectly in the misdeclaration of goods in the shipping bills filed by the exporter, for the reasons that:

- a) Neither the SCN nor the impugned order discussed as to how the appellant had abetted with the exporter in the alleged mis declaration of goods in the shipping bills. None of the statements recorded from the exporter or any one implicates the appellant in any manner in the said mis declaration of goods nor is there any admission to that extent.
- b) Investigation carried out by DRI has not found the appellant's involvement in any manner with respect to the alleged misdeclaration of goods in the shipping bills filed by the exporter.

Hence the imposition of penalties under Section 114 and 114 AA of the Customs Act, based on assumptions and presumptions, is unsustainable.

13. Ld. Counsel for Shri. Uthaman further submits that the appellant as a G-Card Holder has only a clerical function of data entry on the basis of the invoices duly signed by the exporter given to him. It is evident from the export documents relied upon by DRI that the description of the goods, its value, weight and contents and other details are filed and duly signed by the exporter himself and not by the appellant, thus the limited role of the appellant is filling the data in the annexure based on the documents provided by the exporter on which he would act under bonafide belief, to be true and correct. The mere clerical assistance provided by the appellant to the exporter as an employee of a CHA, in the normal course of his employment could not by any stretch of imagination, amount to abetting without any positive or collaborative evidence to show or indicate that the appellant has colluded with the exporter in the alleged offence. The Ld. Counsel submits that the appellant cannot be held responsible and penalised particularly in this case where he has no role in the offense alleged against the exporter. Reliance is placed on the decisions in:

- a) *G. Seenivasan Vs. Commissioner of Customs (Airport & Aircargo), Chennai (2024) 18 Centax 248 (Tri. Mad)*
- b) *Jeena and Company Vs. Commissioner 2021 (378) E.L.T.528 (Tri. Bang.)*
- c) *Sai Shipping Services Vs. Commissioner - 2009 (239) E.L.T. 104 (Tribunal)*
- d) *K.L. Alagu Murugappan Vs. CC, Trichy 2004 (163) E.L.T.352 (Tri.-Chennai)*

14. Shri Anoop Singh, Ld. A.R., vehemently opposed the submissions of the Ld. Consultant for the CHA as well as the Ld. Counsel for Shri Uthaman and reiterated the findings of the Adjudicating Authority in the impugned order. It was submitted that the fact that 47 shipping bills were filed over a period for Lakshmi Fabrics indicates the complicity of both the appellants. As regards the non-imposition of fine by the Ld. Adjudicating Authority on Lakshmi Fabrics, the Ld. AR submits that the said imported goods were cleared on the terms of bond after availing DGFT authorisation benefit and were then diverted to the local market without using the same in manufacture or processing of finished goods. It is submitted that in such circumstances the Ld. Adjudicating Authority ought to have imposed redemption fine. Ld. A.R submits that the impugned order is not proper since the Learned Adjudicating Authority has refrained from imposing fine on goods valued at Rs.36.98 crores as the goods were not physically available for confiscation. Reliance was placed on the decisions in:

- a) *Weston Components Ltd. Vs. Commissioner of Customs, New Delhi 2000 (1) TMI 45 SC*
- b) *Commissioner of Customs Vs. M/s. Madras Petrochem Ltd. Customs Excise & Service Tax Appellate Tribunal 2020 (1) TMI 846, Madras High Court*
- c) *M/s. Pentafour Solec Technologies Ltd., Mr. S.N. Rajan, Managing Director and Mr.V.Ramakrishnan, Chairman Vs. Commissioner of Customs, Chennai 2024 (12) TMI 1037 CESTAT, Chennai*

15. Ms. J. Ragini, Ld. Advocate appearing as the Amicus curie for the Respondent Laxmi Fabrics in the appeal filed by the Department, in the written submissions filed on behalf of Lakshmi Fabrics, submitted that:

- a) Confiscation and redemption fine can be ordered only on imported goods and can be imposed only on the imported goods.
- b) Redemption fine is permissible only if the goods has been seized and are liable for confiscation under the customs act. Goods not seized or not available for confiscation cannot be subjected to redemption fine.
- c) The DEEC bond executed by the Respondent Lakshmi Fabrics is a bond for duty exemption and does not equate to a provisional bond under Section 110 A of the Customs Act, 1962. The DEEC bond

executed specifically provides for recovery of customs duty and interest under Sec.142(1) of the Customs Act and does not contain any conditions regarding redemption fine for goods already cleared and therefore imposing a redemption fine would be inconsistent with the bonds terms. Consequently, confiscation or redemption fine cannot be imposed on already cleared goods without physical availability. Reliance was placed on the decisions in

*a) Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner – reported in 20098 (235) E.L.T. 623 (Tri.LB)*

*b) Commissioner Vs. Finesse Creation Inc. – 2010 (255) E.L.T.A120 (S.C.)*

16. We have heard the rival submissions, perused the appeal records as well as the citations submitted.
17. The issues that arise for our consideration are:
  - A) Whether the penalties imposed on the appellants under Section 114 and Section 114AA of the Customs Act, 1962 are tenable? and
  - B) Whether the Adjudicating Authority, has erred in not imposing redemption fine on the goods imported availing the benefit of applicable notifications and as detailed in Annexure E to the SCN, on the ground that the goods are physically unavailable?.
18. We proceed to decide the first issue by noticing that Section 114 of the Act *ibid* makes any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, liable to penalty as specified in clauses (i) to (iii) thereunder.
19. Thus, a person has to do or omit to do any act in relation to any goods; or has to abet the doing or omission of such an act in relation to any goods and such act or omission should render such goods liable to confiscation under Section 113. The words "*such goods*" clearly refer to "*any goods*" at the commencement of the section. The penalty imposed on the appellants is under Section 114. The adjudicating authority has not specified the specific sub-clause thereunder.

20. At this juncture, it is apposite to notice that, the Honourable Supreme Court has, in ***Union of India v Mustafa & Najibai Trading Co, 1998 (101) ELT 529 (SC)***, held that the distinction between penalty *in rem* and penalty *in personam* has been maintained in the Customs Act 1962. The relevant portion is as under:

“**31.** Similarly, in the case of D. Bhoormall (supra) this Court, while considering the provisions of Section 167(8) of the Sea Customs Act, 1878, has pointed out that proceedings for confiscation of contraband goods are proceedings in rem and the penalty of confiscation is enforced against the goods irrespective of whether offender is known or unknown and it is not necessary for the customs authorities to prove that any particular person is concerned with their illicit importation or exportation and it is enough if the department furnishes prima facie proof of the goods being smuggled stocks. **It was observed that the second kind of penalty which is enforced against the person concerned in the smuggling of the goods is one in personam and in the case of the said penalty the Department have to prove further that the person proceeded against was concerned in the smuggling.** It was held that “goods found to be smuggled goods can, therefore, be confiscated without proceeding against any person and without ascertaining who is their real owner or who was actually concerned in their illicit import.” [pp. 550, 551 and 554]

**32.** This distinction between the nature of the two penalties, viz., penalty in rem and penalty in personam, has been maintained in the Act. The provision regarding confiscation of goods contained in Sections 111 and 113 of the Act is a penalty in rem which is enforced against the goods, while the personal penalties imposed under Section 112 and other provisions of the Act are in the nature of penalty in personam which are enforced against the person concerned.” **(emphasis supplied)**

21. Further, Abetment is not defined in Customs Act, 1962. The expression “abetment” has been defined under the General Clauses Act as one known in the Indian Penal Code and under the Indian Penal Code section 107 defines abetment. It is noticed that there is no material change under Section 45 of Bharatiya Nyaya Sanhita, 2023. It can also be noted with profit that the Honourable Supreme Court has in its decision in ***Shri Ram and others v State of UP, AIR1975 SC 175:1974 INSC 230***, held that “Section 107 of the Penal Code which defines abetment provides to the extent material that a person, abets the

doing of a thing who "Intentionally aides, by any act or illegal omission, the doing of that thing." Explanation 2 to the section says that "Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to and the doing of that act. **"Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107."** (emphasis supplied).

22. Abetment thus means a positive act on the part of such person. Hence, when the act of abetment has a prerequisite of *mens rea*, it cannot be a harmonious construction of Section 114 that the person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation, can be visited with a penalty even in the absence of proof of *mens rea*.
23. Therefore, we are of the firm opinion that Section 114 has a penal character of being a penalty *in personam*, and hence the burden of proof is on the Customs authorities to bring home the guilt with respect to a person alleged to have done or omitted to do an act or abetted the doing or omission of doing an act, in relation to the goods liable to confiscation, by adducing satisfactory evidence. Establishing mens-rea is also a prerequisite to attribute attempt.
24. We find that in the instant case, neither the SCN nor the impugned order discusses as to how the appellants have abetted Laxmi Fabrics in the alleged mis declaration of goods in the shipping bills. None of the statements available in the Appeal records implicate the appellants in any manner with respect to the said mis declaration of goods. We do not find any admission of the appellants or representatives of the appellants that they were aware of any such misdeclaration by Laxmi Fabrics. There is no evidence let in by the Department of any intentional act or omission on the part of the appellants in relation to the goods that have been confiscated or held liable to confiscation. However, this is not to say that the conduct of the appellants is beyond reproach. But such conduct merits to be dealt with under the provisions of the CHA regulations prevailing for the relevant period that are applicable to a

Customs House Agent or its employee as a holder of 'G' card, i.e. CHALR Rules 2004. It cannot be that the appellants are liable to be visited with penalties under the Customs Act, and yet are not being proceeded against under the applicable CHA Regulations. Pertinently, there is nothing on record indicating that the customs authorities were intending to proceed against the appellants under the CHA regulations at that relevant point in time. Nothing has also been brought to our notice which would indicate that the appellants had been proceeded against under the CHA regulations since then. Therefore, considering the above facts, on preponderance of probabilities, we are of the firm opinion that the penalties imposed on the appellants under Section 114 are unsustainable and are liable to be set aside.

25. In order to examine the correctness of the penalty imposed on the appellants under Section 114AA, We notice the provisions of Section 114AA of the Customs Act, 1962, which read as under:

“If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”

26. Thus, in order to impose a penalty under Section 114AA, the following aspects need to be satisfied:

- a) It can be imposed only on a person
- b) Such a person should knowingly or intentionally:
  - i) Make, sign or use
  - ii) or cause to be made, signed or used
- c) Any declaration, statement or document
  - i) which declaration, statement or document is false or
  - ii) which declaration, statement or document is incorrect in any material particular
- d) the aforesaid actions should be in the transaction of any business for the purposes of this Act.

27. Firstly, we note that there are different types of actions, namely, make sign or use or cause to be made, signed or used, that are specified in

the said provisions which can be performed with respect to a declaration, statement or document in the transaction of any business for the purposes of the act. This makes it imperative that the particular action being alleged against the person is put to the notice of the person who is sought to be brought within the ambit of the said penal provision. That apart, whether it was a declaration, statement or a document on which such action was performed should also be stated in the notice when it raises the allegation that the person is liable for penalty under Section 114AA. Moreover, it also needs to be specified in the notice whether such declaration, statement or document on which the listed actions were performed, is false or whether such declaration, statement or document is incorrect in any particular, and if so what is/are the particular/particulars which is/are found to be incorrect. Only then would it enable such a person, who is alleged to have done these actions which is stated to make the person liable for penalty under Section 114AA, to effectively set up his defence to rebut the charge/allegation. When we consider that the quantum of penalty that can be imposed, which can be upto five times the value of the goods, the incidence could well be quite heavy. Hence, it is necessary that these aspects are carefully detailed when the charges are laid down in the notice. There is no gainsaying that a notice would be read as a whole to find out as to whether the person concerned is made aware of the various grounds on the basis of which action is proposed to be taken as well as nature of the action. However, that in itself cannot be taken as a sanction to cryptically summarise that "for various omissions and commissions" the person is liable to penalty under the specified penal sections, and thereby jettison the detailing of the action that is sought to be brought under the specified penal section being invoked. We find that the appellants herein have not been put to notice as elucidated supra while being proposed to be visited with the penalty under Section 114AA, thereby rendering such imposition of penalty unsustainable on this count.

28. That apart, it is only a person who deliberately and consciously, aware that the declaration, statement or document is false or incorrect in any material particular, thereafter makes, signs or uses, or causes it to be made signed or used, who can then be said to be knowingly or

intentionally performing the said acts so as to be made liable for penalty under Section 114AA. The requirement of mens-rea is explicit on a plain reading of the provision and hence the burden of proof, that the person is liable for penalty under Section 114AA, rests heavily on the Department. We find that the Department has not discharged this burden in the instant case. The imposition of penalty on the appellants under Section 114A fails on this aspect too.

29. Furthermore, although the appellants have been imposed with a penalty under Section 114AA, we are surprised to notice a complete absence of a finding that the appellants are liable for penalty under Section 114AA, in the impugned order in original. Imposition of penalty under Section 114AA without rendering a specific finding in this regard is indicative of a non-application of mind and penalties thus imposed are wholly untenable on this count too.
30. We are therefore of the considered view that the penalties imposed on the appellants herein under Section 114A and 114AA by the adjudicating authority, as stated in the impugned order in original, cannot be sustained and are liable to be set aside.
31. Now we proceed to examine whether the Adjudicating Authority has erred in not imposing redemption fine on the goods imported availing the benefit of applicable notifications and as detailed in Annexure E to the SCN, on the ground that the goods are physically unavailable.
32. Chapter XIV of the Customs Act, 1962 deals with confiscation of goods and conveyances and imposition of penalties. It is only Section 125 of the Customs Act *ibid* in the said Chapter which provides an option to pay fine in lieu of confiscation. Section 125 reads as follows :-  
 "125. Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods."

33. On a plain reading, Section 125(1) stipulates:
- a) Whenever confiscation of any goods is authorised by this Act
  - b) The officer adjudging it
  - c) *may in the case of any goods, the importation or exportation whereof is prohibited* under this Act or under any other law for the time being in force
  - d) *and shall, in the case of any other goods,*
  - e) *give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized*
  - f) *an option to pay in lieu of confiscation such fine as the said officer thinks fit*
34. Thus, in every situation where confiscation of any goods is authorised by the Customs Act, it is governed by Section 125 of the Act. The officer adjudicating such confiscation, is given a discretion to allow the owner of such goods, that is the goods whose importation or exportation is prohibited, to pay such fine as the said officer thinks fit, in lieu of the confiscation. That is to say, the officer also has a discretion in determining what would be the appropriate fine to be paid in lieu of the confiscation. If the owner of such prohibited goods imported or exported is not known, only then can the officer exercise the discretion in favour of the person from whose possession or custody such goods (i.e, the goods whose importation or exportation is prohibited under Customs Act or any other live law) have been seized. The discretion vested in the officer to determine the appropriate fine continues.
35. However, in the case of goods other than those whose importation or exportation is prohibited, the said officer does not have a discretion to

refuse to allow the option of payment of fine in lieu of confiscation. The use of the word 'shall' makes it obligatory for the said officer, in the case of non prohibited goods imported or exported, to allow the option to pay fine in lieu of confiscation, at first to the owner of such non prohibited goods. Again, in such cases of non-prohibited goods too, it is only when the owner is not known, that the officer can allow the option to pay fine in lieu of confiscation to the person from whose possession or custody such non prohibited goods have been seized. The discretion vested in the officer to determine the appropriate fine remains in such cases too.

36. It is further seen from the proviso to Section 125 (1) that the fine to be paid in lieu of confiscation is subject to a ceiling. The said proviso, stipulates that, such fine ***shall not exceed the market price of the goods confiscated***, less in the case of imported goods the duty chargeable thereon. This cap stipulated for the fine to be paid in lieu of confiscation is without prejudice to the provisions of the proviso to sub-section (2) of Section 115. The said proviso sub-section (2) of Section 115 fixes a cap on the fine in case of conveyances used for the carriage of goods or passengers for hire and stipulates that the owner of such conveyance shall be given an option to pay fine in lieu of confiscation not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.
37. Bearing the aforesaid prima facie observations in mind, considering the vintage of the Customs Act, it would be appropriate to first take a look at the judicial decisions that have evolved over the years, and which hold the field; wherein Section 125 of the Customs Act *ibid* had come up for consideration of the Honourable Supreme Court and High Courts.
38. One of the earliest decisions where Section 125 post the insertion and substitution introduced by S.9 of the Customs (Amendment) Act, 1985, was opined upon by the Hon'ble Apex court, is in the case of ***Mohan Meakin Ltd v. CCE, Kochi, 2000 (115) ELT 3 (SC)***. The appellant before the Apex Court was asked to show cause why the hop pellets purchased by it should not be confiscated and action taken for imposition of penalty under Section 112(b) of the Act. The Notice was

issued on the ground that that the import of the entire consignment of hop pellets made by the importers, a part whereof was purchased by the appellant, was also in contravention of Section 111(m) of the Act. The appellant's contention was that that they are bona fide purchasers of the goods in question in the normal course of their business and they had come to know that the goods in question was the subject-matter of an earlier proceeding under Section 111(d) of the Act; consequent to which the goods in question were released on payment of redemption fine and the purchase made by them was subsequent to the said redemption order made under Section 125(2) of the Act. Therefore, the appellant contended, it is impermissible to subject the same goods for confiscation for a second time and further subject it to a fresh levy of redemption fine, penalty or duty. After examining the relevant sections, the Supreme Court held as under:

**"Section 125 of the Act empowers the authorities after adjudication to release the goods to the person from whose possession the same has been seized, on collection of redemption fine in lieu of confiscation.** But such redemption of the goods is subject to the owner being called upon to pay any duty and charge that is payable in respect of such goods. The proviso to Section 125 (1) also makes it obligatory on the adjudging authority to evaluate the fine which shall not exceed the *market price* of the goods confiscated (emphasis supplied). **Therefore, there is a mandatory requirement on the adjudicating officer before permitting the redemption of goods, firstly, to assess the market value of the goods and then to levy any duty or charge payable on such goods apart from the redemption fine that he intends to levy on sub-clause (1) of that Section."** (emphasis supplied)

39. Thereafter, Section 125 came up for analysis by a three judge bench of the Honourable Supreme Court, in the case ***Commr. of Cus (Imports), Mumbai v. Jagdish Cancer & Research Centre, 2001 (132) ELT 257 (SC)*** wherein the decision in Mohan Meakin was cited with approval. The Apex Court was considering an appeal preferred by the Department against an order of the Tribunal which had, inter-alia, set aside the confiscation of the imported equipment under Section 111(o). The liability of customs duty was however upheld, though found to be unenforceable, as the show cause notice issued, was not a valid notice. The Department contended that the show cause notice has not been issued under Section 28(1) of the Customs Act. Therefore,

question of notice having not been issued by a "proper officer" does not arise nor the question of limitation. The submission was that sub-section (2) of Section 125 of the Customs Act provides that where any fine in lieu of confiscation of goods is imposed, the importer shall also, in addition, be liable to any duty and charges payable in respect of such goods. The Respondent, Jagadish Cancer and Research Centre (referred to as Centre in the Judgement), submitted that that demand of customs duty and the order for payment of the same is relatable to only Section 28(1) of the Customs Act, as also found by the CEGAT. That being the position, the notice was beyond time and not by a "competent officer" authorised to issue the same.

40. The Apex Court, after reproducing Section 124 and Section 125 of the Customs Act, went on to hold as under:

**"11.** Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods". **A reading of sub-sections (1) and (2) of Section 125 together makes it clear that liability to pay duty arises under sub-section (2) in addition to the fine under sub-section (1). Therefore, where an order is passed for payment of customs duty along with an order of imposition of fine in lieu of confiscation of goods, it shall only be referable to sub-section (2) of Section 125 of the Customs Act.** It would not attract Section 28(1) of the Customs Act which covers the cases of duty not levied, short levied or erroneously refunded etc. The order for payment of duty under Section 125 (2) would be an integral part of proceedings relating to confiscation and consequential orders thereon, on the ground as in this case that the importer had violated the conditions of notification subject to which exemption of goods was granted, without attracting the provisions of Section 28(1) of the Customs Act. **A reference may beneficially be made to a decision of this Court reported in Mohan Meakins Ltd. v. Commissioner of Central Excise, Kochi, 2000 (115) E.L.T. 3 (S.C.) = (2000) 1 SCC 462 wherein it has been observed in Para 6 "..... Therefore, there is a mandatory requirement on the adjudicating officer before permitting the redemption of goods, firstly, to assess the market value of the goods and then to levy any duty or charge payable on such goods**

**apart from the redemption fine that he intends to levy under sub-section (1) of that section.**” In this view of the matter the objection raised by the Centre that Section 28 of the Customs Act would be attracted is not sustainable.” **(emphasis supplied)**

41. Again, in the decision in ***Collector of Customs, Bombay v. Elephanta Oil and Industries Ltd, 2003 (152)ELT 257 (SC)***, addressing the contention of the Respondent therein that once the imported article is re-exported as directed by the department, there is no question of levying any penalty or redemption fine, the Apex Court, after reproducing Section 112, held as under:

“9. As against this, Section 125 empowers the concerned officer to confiscate the goods which are illegally or improperly imported. After confiscation of the goods under the said section, the Collector of Customs is empowered to give an option to the concerned party to get the same back after paying redemption fine. Section 125(1) reads thus:—

**“Section 125. Option to pay fine in lieu of confiscation. — (1)** Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, ***give to the owner of the goods or***, where such owner is not known, the person from whose possession or custody such goods have been seized, ***an option to pay in lieu of confiscation such fine as the said officer thinks fit.***”

10. From the aforesaid two sections, it is apparent that both operate in different fields, namely, one requires imposition of penalty and other provides for confiscation of improperly imported goods. Section 111 provides that goods brought from the place outside India are liable to confiscation if the goods are improperly imported as provided therein. In cases where goods are liable to confiscation, discretion is given to the authority to impose penalty. **Further, Section 125 empowers confiscation of such goods and thereafter, confiscated goods vest in the Central Government. The Section further empowers the authority to give an option to the owner or the person from whom goods are seized to pay fine in lieu**

**of such confiscation for return of the goods and the fine is also limited up to the market price of the goods.** Therefore, levy of fine in lieu of confiscation is in addition to levy of penalty imposable under Section 112." **(emphasis supplied).**

42. It is further seen that in ***Commissioner of Customs, Mumbai v. Mansi Impex, 2011 (270)ELT 631 (SC)***, the Apex Court was considering a batch of appeals wherein the respondents had imported rough marble blocks without any licence and, therefore, their goods which were sought to be imported illegally without valid licence were confiscated with option to redeem the goods on payment of different amounts of fine and penalties. The Supreme Court after reproducing Section 125, went on to hold as under:

"12. **Section 125 of the Act being the provision for levying the redemption fine in lieu of confiscation, the said provision is to be strictly followed and, therefore, said redemption fine should be imposed by the competent authority which amount would not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.**

13. It is true that in the present case, the respondents had imported Marble Blocks without any licence and, therefore, their goods which were sought to be imported, were confiscated. On payment of duty as determined, the question that arose was as to what would be the redemption fine payable, if any. The said issue was considered by the Commissioner and thereafter he had imposed redemption fine in lieu of confiscation and also penalty in terms of the provisions of Sections 125 and 112 of the Act respectively. However, the aforesaid orders passed by the Commissioner came to be interfered with by the Tribunal whereby the Tribunal reduced the quantum of redemption fine as also the penalty.

14. We have considered the submissions of the counsel appearing for the appellant that the aforesaid reduction in case of redemption fine as also the penalty is illegal and without jurisdiction. However, the records disclose that the Commissioner had imposed the redemption fine in lieu of confiscation without making any market enquiry and survey regarding the market price of the goods confiscated at the relevant point of time. **The quantum of redemption fine which could be imposed is always dependent on the determination of the market price of the goods confiscated. This is one of the pre-requisites prescribed in the statute itself. In the**

**present cases where not even a sample market survey was done for determining the market price of the goods, it could not have been possible for the Commissioner to arrive at a legally justified and correct quantum of redemption fine to be imposed. Any such determination would also be without following the procedure prescribed under the Act.**

15. We also feel that as of now also, no useful direction could also be given to the Commissioner to get a market survey made even at this stage due to lapse of number of years in the meantime and also because of the fact that no sample of the goods imported by the respondents has been retained or kept by the Department. Therefore, in our considered opinion, in the aforesaid appeals, no useful purpose would be served by interfering with the orders passed by the Tribunal, particularly in view of the fact that even the Department is unable at this time to ascertain and determine the market price of the goods confiscated so as to enable the authorities to levy appropriate redemption fine. In that view of the matter, we dismiss these appeals on the aforesaid grounds leaving the parties to bear their own costs." **(emphasis supplied)**

43. A decade ago, in ***Fortis Hospital Ltd v. Commissioner of Customs, Import, 2015 (318) ELT 551 (SC)***, the Apex Court had to determine whether in the adjudication of an SCN issued under Section 124 of the Customs Act proposing only confiscation of imported machinery under Section 111(o) of the Act *ibid* and imposition of penalty under Section 112 of the Act the adjudicating authority could have, in the adjudication order, after confiscating the goods and imposing redemption fine, also directed payment of customs duty for failure to discharge the continuing obligation under notification No.64/88 during the material period. The Apex Court, after reproducing Section 124 and Section 125, went on to hold as under:

12. **It may be seen from the bare reading of the aforesaid Section that under Section 125(1) of the Act, option is given to the importer whose goods are confiscated, to pay the fine in lieu of confiscation and redeem the confiscated goods.** Before this action is taken, show cause notice is to be issued under the provision of Section 124 of the said Act. This provision pertains to confiscation of goods and provides procedural safeguards inasmuch as there cannot be any order of confiscating any goods or imposing any penalty on any person without complying with the procedure contained in Section 124. Section 124 mandates issuance of the

Show Cause Notice before passing any such order and contemplates two actions: first, relating to confiscating of the goods and second, pertaining to imposition of penalty. Pertinently, this action does not deal with payment of import duty at all.

13. It is not in dispute that show cause notice in the instant case was issued under Section 124 of the Act. Once such a show cause notice was issued and as can be seen from the proposed action which was contemplated in this provision (as has been taken note of above), it was also confined to confiscation of the imported machinery and imposition of penalty. Nothing was stated about the payment of duty. However, in spite of the fact that show cause notice was limited to confiscation of the goods and imposition of penalty, the final order which was passed included the direction to pay the customs duty as well. **It is clear that when such an action was not contemplated, which even otherwise could not be done while exercising the powers under Section 124 of the Act, in the final order there could not have been direction to pay the duty.** (emphasis supplied)

44. In the Fortis Hospital Judgement, the Apex Court also disagreed with the contention of the senior counsel appearing for the Department that that even if an option was not exercised, the moment it was stated in the order of the Commissioner that fine is being "imposed," sub-section (2) of Section 125 would get attracted. The Apex Court held that Trigger point is the exercise of a positive option to pay the fine and redeem the confiscated goods. Only when this contingency is met, the duty becomes payable. Indubitably, unless an option is exercised, fine does not become payable. The stipulation contained in the adjudicating order was only contingent in nature which contingency would have arisen only on exercising the option by the importer to pay fine in lieu of confiscation and to redeem the goods. The Apex Court in the Fortis Hospital Judgement has also gone on to hold as under:

"19. It is not that the Department is without any remedy. We have gone through the provisions of Notification No. 64/88, dated 1-3-1988. As pointed out above, importer would be exempted from payment of import duty on hospital equipment only when the conditions contained in the said notification are satisfied. Some of the conditions, as pointed out above, are to be fulfilled in future. If that is not done and the importer is found to have violated those conditions, show cause notice could always be given under the said notification on payment of duty, independent of the action which is permissible under Section 124 and Section 125 of the Act. **It is also**

**important to mention that under certain circumstances mentioned in the notification, the importer can be asked to execute a bond as well. In those cases, action can be taken under the said bond when the conditions contained therein are violated. Therefore, if the Department wanted the Institute to pay the duty, which may have become payable, it could have taken independent action; de hors Section 124 of the Act, for payment of duty, simultaneously with the notice under Section 124 of the Act or by issuing composite notice for such an action.** No doubt, it could have waited for option to be exercised by the Institute under Section 125(1) of the Act as well and in that eventuality, duty would have automatically become payable under Section 125(2) of the Act. But when such an option was not exercised, it could have taken separate and independent action by issuing show cause notice to the effect that the Institute had violated the terms of exemption notification and therefore, was liable to pay duty. **(emphasis supplied)**

45. A year ago, the Hon'ble Apex Court, in the decision in ***Navayuga Engineering Co Ltd v. Union of India, 2024(390) ELT 3 SC: (2024) 20 Centax 566 (SC)***, was considering the questions (i) Whether there is a liability to pay customs duty when the confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act, 1962? And (ii) Whether, the liability to pay such duty will include the liability to pay interest on delayed payment under Section 28AB of the Act? and (iii) What is the true and correct ratio of the decision in Jagdish Cancer case?
46. The Apex Court, provided its conclusions as under:

"1.1 For the reasons to follow, we have held that **the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine under Section 125 of the Act. Furthermore, when confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125 will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepts it.** Liability to pay customs duty in such confiscation proceedings under Section 125(2) is distinct from the assessment and determination of duty, which can rise only under Section 28. The duty liability arising under Section 125(2) must be assessed under Section 28. Thus, **we answered the second question by holding that once Section 28 applies for determination of duty, interest on delayed payment of**

**duty under Section 28AB follows.** We have also clarified that **Jagdish Cancer case is not an authority for the proposition that when the liability to pay customs duty arises under Section 125(2), the calculation, determination or the assessment of such duty cannot be made under Section 28.**” (emphasis supplied)

47. In the deliberations to arrive at the aforesaid conclusions elaborated in the decision, the Apex Court has observed as under:

5.1 **Confiscation of goods is appropriation of property by the revenue. The right, title and interest in the property, if any, is transferred and vested in the state under Section 126.** Considering the serious consequences of such an action, authority and process of law mandated Article 300A , Parliament prescribed the procedure under Section 122A, adjudicatory authority under Section 122, obligated issuance of a show cause notice under Section 124 before confiscation.

6. Section 125 of the Act : Alternatively, there is also **the option of redemption of the confiscated goods under Section 125,** the statute specifically empowers the owner of the goods to exercise an option of legitimising the importation by paying fine, duty and other charges. **The procedure prescribed is simple; (i) confiscation must be authorised, (ii) those goods should not be prohibited goods, (iii) the officer shall give an option to redeem the goods in lieu of fine,** (iv) the owner or the possessor must exercise the option and (v) pay the fine (vi) within 120 days. **The purpose and object of Section 125 is to enable a transition from ‘illegality’ to ‘compliance’ of laws. It grants an opportunity to the owner or possessor of the confiscated goods to regularise the transaction by payment of fine.** This provision is based on a public policy consideration that balances crime and punishment and achieves the twin objectives of enabling a citizen to remain on the right side of law by adopting a prescribed measure and amicable settlement of disputes through resolution. ...”

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8.4 The above referred judicial interpretation has attained statutory recognition in 1985 when the Parliament introduced sub-section (2) to Section 125 to clarify and declare that the owner of goods, in addition to payment of fine, shall also be liable to pay duty and other charges upon exercising the option to pay fine to redeem goods. **Thus, the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed after payment of fine and other charges under Section 125 of the Act. This is the first principle.**

8.5 In our view, this position gleaned from Security Finance case has remained consistent with amendments introduced to Section 125 in the year 1985. The customs duty obligation on once exempted goods, liable to be confiscated for violation of conditions, arises only after the option to redeem them is exercised under Section 125. Once the option is exercised, the acceptance is subject to the conditions specified in Section 125. The primary condition is payment of fine in lieu of confiscation. Thus, this duty obligation is inextricably connected to the option to redeem the confiscated goods. In other words, it is a precondition for redemption.

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**8.8 We can thus conclude the second principle that, when confiscation proceedings are initiated under Section 124 of the Act, the obligation to pay duty and other charges under Section 125(2) will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepting it. (emphasis supplied)**

**8.9 An important principle that needs to be recognised is that, the customs duty obligation in confiscation proceedings does not occasion either under Section 12 or 28. It has arisen because of the option available and exercised under Section 125.** This obligation should not be confused with the method and procedure by which that customs duty is assessed and determined, which is provided under Section 28. It is in this context that we need to consider and explain the decision of this court in Jagdish Cancer case.

48. The Apex Court, in the Navayuga Engineering Judgement, then proceeds to examine its decision in Jagdish Cancer case and holds as under:

“9.6 We conclude by holding that Jagdish Cancer case is not an authority for the proposition that when the liability to pay customs duty has occasioned under Section 125, the calculation, determination or the assessment of such duty cannot be made under section 28.”

49. It is also seen that a three Judge Bench of the Delhi High Court while answering a reference “*Notwithstanding that an importer may not have made the payment of the redemption fine, duty, interest and penalty within the time stipulated in the order of confiscation of imported goods passed under Section 125 read with Section 126 of the Customs Act, 1962 ('Act'), and which order has attained finality, but makes such payment belatedly but prior to the date of auction, can the Central Government retain the excess auction*”

*proceeds after adjusting the customs duty, interest, penalty and redemption fine or has such excess amount have to be returned paid to the owner of the goods?*, inter-alia examined Section 124 and 125 of the Customs Act in the decision in ***Gillette India Ltd v. Commissioner of Customs, 2019 (367) ELT 23 (Del)*** and held as under:

“20. Under Section 125 of the Act, an option indeed is given to the importer to redeem the goods by payment of fine. A time limit is also set for that purpose. If, as in the present case, the importer fails to avail of that opportunity it leads inevitably to confirming the ‘confiscation’ of the goods and their sale by public auction. Section 126(1) of the Act spells out the legal effect of such ‘confiscation’. Section 126(2) of the Act lends a further finality to such vesting. It requires the ‘officer adjudging confiscation’ to mandatorily “take and hold possession of the confiscated goods.” Any connection that the owner/possessor [sic].

21. The distinction sought to be drawn between confiscation of ‘prohibited goods’ and of ‘other goods’ is relevant only to the extent of the discretion in the adjudging officer to permit their redemption by payment of fine. Once there is a failure to pay the fine within the time stipulated, the consequence is the same whether the goods are ‘prohibited goods’ or ‘other goods’. **The transient nature of the confiscation ends and it becomes ‘absolute’. This is what is made clear by Section 126 of the Act. Sections 125 and 126 of the Act form one continuous scheme and are not to be read disjunctively.** Once the vesting of the goods in the Government is absolute, it would be inconsistent with the character of that vesting to contend that the Central Government can only recover through the sale of such goods the duty, penalty and interest and should return the excess to the owner/possessor of the goods

50. When the Apex Court examines a section and opines on it, a court, tribunal or any authority, down the hierarchical echelon cannot then express a view to the contrary, as it would be an affront to the said interpretation and subversive of judicial discipline. The binding value such interpretation carries is undeniable. In fact, the Apex Court in ***Secundrabad Club Etc v. C.I.T – V Etc. [2023] 12 S.C.R. 979 : 2023 INSC 736***, has held that even the obiter dictum of the Supreme Court is binding under Article 141 to the extent of the observations on points raised and decided by the Court in a case. So would the decision taken by a larger bench of the High Court be binding on us.

51. Thus, on a careful consideration of the aforecited decisions and the judicial dicta laid down, it is evident that the scheme of Section 125 shows that it is in respect of any goods the confiscation of which is authorised, and it is upon such confiscation, that the adjudicator gives an option to the owner of the goods, or in case the owner is not known the person from whose possession or custody such goods have been seized, the option to pay a fine in lieu of confiscation. That is to say, Section 125(1) makes it imperative that confiscation precedes the giving of option to pay fine in lieu of confiscation. Furthermore, the proviso to Section 125(1) stipulates that the **fine to be paid in lieu of confiscation** shall not exceed the market price **of the goods confiscated** less in the case of imported goods the duty chargeable thereon. Therefore, in light of the Apex Court laying down in ***Commissioner of Customs, Mumbai v. Mansi Impex, 2011 (270)ELT 631 (SC)***, that **the quantum of redemption fine which could be imposed is always dependent on the determination of the market price of the goods confiscated and that this is one of the pre-requisites prescribed in the statute itself**, it becomes evident that the said procedure necessarily has to be followed. The *sine qua non* being that the goods have to be confiscated and under the control of the Department, so that the Department can find out the market price of the goods confiscated to determine the fine to be imposed. In such circumstances, availability of goods physically, not only for confiscation, but also for determination of its market price, becomes a necessary prerequisite.
52. Even otherwise, on a perusal of chapter XIV of the Customs Act, it becomes evident that it specifies certain penalties in personam, as can be seen from personal penalties imposed under Section 112, 114 and other provisions imposed on 'any person', 'person in charge' etc, enforceable against the person concerned. Whereas, confiscation of improperly imported goods etc under Section 111, confiscation of goods attempted to be improperly exported etc under Section 113, being enforceable against the goods, tantamount to a penalty in rem. When we examine the scheme of the Act, it is also pertinent to note that sub-section (2) of Section 23 of the Customs Act permits the owner of any imported goods to relinquish his title to the goods at any time before an order for clearance of the goods for home consumption under Section

47 or an order for permitting the deposit of the goods in a warehouse under Section 60 has been made and upon such relinquishment, he shall not be liable to pay the duty thereon. Proviso to the said subsection however stipulates that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under the Act or any other law for the time being in force. In other words, with respect to the improperly imported goods or goods attempted to be improperly exported etc., the order of confiscation directly affects the status of such goods, being a proceeding in rem. The title or right in such goods, under Section 126, by a statutory appropriation, stands transferred as an absolute title to the Central Government and thus such goods vest in the Central Government.

53. As has also been held by the Delhi High Court in the Gillette case supra, Section 125 and 126 form one continuous scheme and cannot be read disjunctively. While under Section 126(2) the action mandated is for the officer adjudging confiscation to take and hold possession of the confiscated goods, Under Section 125 (1), the officer adjudging confiscation has been given the discretion in case of goods the importation or exportation of which is prohibited, and the compulsory obligation in the case of any other goods, to give the owner of the goods, or where such owner is not known the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine, the quantum of which again is "as the said officer thinks fit" and thus at his discretion. But at the cost of repetition, it needs to be emphasised that such fine in lieu of confiscation is subject to the cap prescribed in the first proviso to Section 125(1) **as not exceeding the market price of the goods confiscated**. The statutory mandate that the fine ought not to exceed the market price of the goods confiscated, by such prescription necessitates the goods to be confiscated and for such confiscation to be carried out, the goods to be physically available. The payment of fine apart from being a recompense to the state for reverting the title of the confiscated goods vested in it, back to the person paying such fine in lieu of confiscation, also results in effacement of the illegality and removing any taint attached thereto, subject to fulfilment of the other requirements of

payment of duty etc. In any event, only what is taken possession of can revert to the person opting to pay the fine in lieu of confiscation upon such payment.

54. Furthermore, it is seen that our aforesaid view is also fortified by the decision of Punjab & Haryana High Court in ***Commissioner of Customs, Amritsar v Raja Impex (P) Ltd, , 2008 (229) ELT 185 (P & H)***, in which, one of the substantial questions of law placed before the High Court by the department was whether redemption fine under Section 125 of the Customs Act could be imposed where the goods were neither available for confiscation nor cleared under bond/undertaking. The relevant portions are as under:

“12. It may also be noticed here that in the case of M/s. Weston Components Ltd. v. Commissioner of Customs, New Delhi (supra), the goods were released to the assessee on an application made by it and on the execution of a bond by the assessee and in those circumstances, the Hon’ble Apex Court held that the mere fact that the goods were released on the bond being executed would not take away the power of custom authority to levy redemption fine. A reading of the judgment/order of the Hon’ble Apex Court in M/s. Weston Components Ltd. v. Commissioner of Customs, New Delhi (supra), would show that the Apex Court has taken the view that redemption fine can be imposed even in the absence of the goods as the goods were released to the appellant on an application made by it and on the appellant executing a bond. Since the goods were released on a bond the position is as if the goods were available. The ratio of the above decision cannot be understood that in all cases the goods were permitted to be cleared initially and later proceedings were taken for under-valuation or other irregularity, even then redemption fine could be imposed. We are, therefore, not inclined to accept the contention raised by the appellant on this issue and set aside the redemption fine.

13. The reliance of learned counsel for the revenue upon the provisions of Section 125 of the Act is also misconceived. Section 125 of the Act is applicable only in those cases which have been cleared by the concerned authorities subject to furnishing undertaking/bond etc. However, in the present case, admittedly, the goods were cleared by the respondent authorities without execution of any bond/undertaking by the assessee. Thus, in view of the fact and circumstances of the case, we find no error in the impugned orders. No substantial question of law arises for our determination in the present appeal and the same is hereby dismissed.”

55. It is seen that the Hon'ble High Court of Bombay, in its decision in ***Commissioner of Customs (Import) Mumbai v. Finesse Creation Inc, 2009 (248)ELT 122 (Bom)***, has held as under:

**" 5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods.** Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. **Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed.** The fine is in the nature of computation to the state for the wrong done by the importer/exporter." **(emphasis supplied)**

56. Similar is the view taken by the Larger Bench of the Tribunal in ***Shiv Kripa Ispat Pvt. Ltd. v. Commissioner of C.Ex & Cus. Nasik, 2009 (235) ELT 623 (Tri-LB)***. Again, in ***Bhagyanagar Metals Ltd. v. Commissioner of C.Ex, Hyderabad-II, 2016 (333) ELT 395 (Tri-LB)***, it was held that redemption fine cannot be imposed without seizure or provisional release of goods under bond. Placing reliance on the decision of the Hon'ble High Court of Punjab in Raja Impex case, it was held as under:

"47. Further, learned Counsel pleaded that the fine is payable, if at all, only on redemption of goods. Here there is neither a seizure nor provisional release under bond and, hence, the question of payment of redemption fine either to release the goods or in terms of the bond does not arise. We find that there can be no redemption fine in the absence of any seizure or provisional release of such seized goods under proper bond. In the present case in the absence of such events, redemption fine imposed is not sustainable."

57. We also find that the stand taken by the amicus curie for the Respondent Laxmi Fabrics, namely, that once imported goods are cleared for home consumption, they cease to be imported goods as

defined in Section 2 of the Customs Act and are consequently not liable to confiscation, has found favour with a coordinate bench of this Tribunal. In the decision in ***M/s. Bharath FIH Ltd. Versus The Commissioner of Customs, Chennai And (Vice-Versa), 2025 (2) TMI 110-CESTAT CHENNAI***, to which one of us was a party, (Shri. M. Ajit kumar, Member Technical), the decision of the Bombay High Court in *Finesse Creation* was also relied upon and it was held as under:

"9.16 Whether redemption fine can be imposed when goods are not available.

**As regards the Department's appeal against the impugned order for non- imposition of redemption fine, the Hon'ble Supreme Court in Asstt. Collector v. Bussa Overseas and Properties Pvt. Ltd. [2004 (163) E.L.T. A160 (S.C.)], dismissed the SLP against the judgment and order dated 04/08/1992 of the Bombay High Court in Bussa Overseas and Properties Pvt. Ltd. v. C.L. Mahar, Asstt. Collector [2004 (163) E.L.T. 304 (Bom.)] The High Court had held that once the imported goods are cleared for home consumption they cease to be 'imported goods' as defined in Section 2 of the Customs Act, 1962 and are consequently not liable to confiscation.** This needs to be differentiated from the Supreme Court judgement in the case of *Weston Components Ltd. Vs Commissioner of Customs, New Delhi* [2000 (115) ELT 278 (SC)], wherein the Hon'ble Supreme Court, had earlier upheld confiscation of goods and consequently imposition of redemption fine on the goods not physically available but the same (goods) were allowed provisional release under Bond. In the present case no bond has been executed by the Appellant for the clearance of goods. **The Hon'ble Supreme Court again in Commissioner Vs Finesse Creation Inc. [2010 (255) E.L.T. A120 (S.C.)], dismissed the SLP filed by Commissioner of Customs (Import) against the Judgment of the High Court of Bombay in Commissioner Vs Finesse Creation Inc [2009 (248) E.L.T. 122 (Bom.)]. The High Court had distinguished the Apex Court decision in case of Weston Components Ltd. (supra), while holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods.** In any case the Appellant has not been found committing a blame worthy act and the demand has been restricted to the normal period. Hence the appeal filed by Revenue is rejected." **(emphasis supplied)**

There are a catena of decisions of this Tribunal resonating the same view which are not being cited to avoid multiplying the citations.

58. Yet another fundamental aspect that merits to be borne in mind while examining the exercise of powers by the officer adjudging confiscation under Section 125 of the Customs Act, 1962, is the discretion vested in such Authority. The Hon'ble Apex Court in its decision in ***Union of India (UOI) and Ors. Versus Raj Grow Impex LLP and Ors, 2021 (6) TMI 778 - Supreme Court***, although finding that in the said case the Adjudicating Authority had exercised the discretion injudiciously, has, after examining various precedents on what is discretion and how it has to be exercised by statutory authorities, nevertheless expounded that it is true that the statutory authority cannot be directed to exercise its discretion in a particular manner and also that when a statutory authority is invested with discretion, the same deserves to be left for exercise by that authority. Relevant portions are reproduced as under:

71. **Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the Rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.**

**71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.**

**72. It is true that the statutory authority cannot be directed to exercise its discretion in a particular manner** but, as noticed in the present case, the exercise of discretion by the Adjudicating Authority has been questioned on various grounds and the Appellate Authority has, in

fact, set aside the orders-in-original whereby the Adjudicating Authority had exercised the discretion to release the goods with redemption fine and penalty. Having found that the goods in question fall in the category of 'prohibited goods' coupled with the relevant background aspects, including the reasons behind issuance of the notifications in question and the findings of this Court in Agricas (supra), the question is as to whether the exercise of discretion by the Adjudicating Authority in these matters, giving option of payment of fine in lieu of confiscation, could be approved?

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78. **It is true that, ordinarily, when a statutory authority is invested with discretion, the same deserves to be left for exercise by that authority** but the significant factors in the present case are that the Adjudicating Authority had exercised the discretion in a particular manner without regard to the other alternative available; and the Appellate Authority has found such exercise of discretion by the Adjudicating Authority wholly unjustified. In the given circumstances, even the course adopted in the case of Hargovind Das K. Joshi (of remitting the matter for consideration of omitted part of discretion) cannot be adopted in the present appeals; and it becomes inevitable that a final decision is taken herein as to how the subject goods are to be dealt with Under Section 125 of the Customs Act.

79. As noticed, the exercise of discretion is a critical and solemn exercise, to be undertaken rationally and cautiously and has to be guided by law; has to be according to the Rules of reason and justice; and has to be based on relevant considerations. The quest has to be to find what is proper. **Moreover, an authority acting under the Customs Act, when exercising discretion conferred by Section 125 thereof, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power.** The purpose behind leaving such discretion with the Adjudicating Authority in relation to prohibited goods is, obviously, to ensure that all the pros and cons shall be weighed before taking a final decision for release or absolute confiscation of goods."

59. Therefore, in substance, the fine in lieu of confiscation which may be imposed on the owners, does fall to be determined in the discretion of the said officer adjudging confiscation. In doing so, he will undoubtedly have to take into account all relevant and material circumstances, that he notices, including the extenuating factors on which the owners may rely. We are therefore of the considered view that such an exercise,

when done judiciously, ought not to be lightly interfered with and the discretion so exercised, is liable to be left undisturbed.

60. We find that admittedly in the instant case, in so far as the goods at Annexure E to the SCN are concerned, they are not physically available nor is their present state or their ownership stated in the SCN or in the Order in Original. That apart, it is also admitted that the Deputy Director General of Foreign Trade vide letter dated 08.02.2013 has provided copies of all advance authorisations issued to Laxmi Fabrics and furnished statements regarding details of Advance Authorisations where Laxmi Fabrics has not completed the export obligation and where EODC has not been issued. If at all these goods have been cleared under a bond or under any bank guarantee, at the time of import, there is absolutely no evidence of such bond being live and/or the bank guarantee in vogue, so as to be tenably enforced. There is also nothing forthcoming in the SCN or in the impugned OIO asserting that these goods at Annexure E of the SCN have not already been accounted against the EODC that has been granted. There is also no finding given whether they pertain to goods imported against authorisations in respect of which EODC has not been issued duly correlating with such authorisations and the statement of EODC not issued said to be obtained from DGFT. In any event, in the absence of any evidence that the bond, if any executed, is still live and the bank guarantee if any, is still valid in respect of the goods that are listed at Annexure E to the SCN; it cannot be stated that the authorities have any lien or effective control over the said goods so as to confiscate the same and to impose redemption fine on such goods, when admittedly these goods are not physically available. In such circumstances, we do not find that the discretion exercised by the adjudicating authority upon noticing that the goods are not physically available, in refraining from confiscating the said goods and in not imposing a redemption fine, either arbitrary, or inappropriate, so as to warrant any interference at our hands.
61. At this juncture, it is also apposite to note that the decision of the Bombay High Court in Finesse Creation was noticed and adverted to by the Honourable Apex Court in the aforesaid decision in Raj Grow Impex Case as under:

**"83. Before closing on this part of discussion, we may also refer to a decision of Bombay High Court in the case of Finesse Creation Inc. (supra), cited on behalf of one of the importers.** In that case, the declared value of goods imported by the Assessee in respect of 13 consignments over a period of about three years was rejected and the Commissioner ordered re-assessment of the value of goods; and after re-determination, differential duty was confirmed Under Section 28(2) of the Customs Act with recovery of interest Under Section 28AB thereof. Moreover, the imported goods were confiscated and redemption fine Under Section 125 of the Customs Act was also imposed in lieu of confiscation. **While confirming the differential duty and consequent penalty and interest, CESTAT quashed the imposition of redemption fine because the goods were not available for confiscation. In that context, the High Court said that the concept of redemption fine would arise in the event the goods were available and were to be redeemed; and if the goods were not available, there was no question of redemption of goods.** The said decision cannot be pressed into service in the present case merely because the said importer M/s. Harihar Collections has been able to obtain release of all the goods after passing of the order-in-original of the Adjudicating Authority dated 28.08.2020 when the same was under challenge. **The present one is not a case where the subject goods were not available on the day of passing of the order by the Adjudicating Authority.**"

Thus, the very fact that the Apex Court, apart from noting that the said decision of the Bombay High Court could not be pressed into service in the instant case, has not found the decision to be untenable or liable to be set aside, also makes it a decision that is valid, and one that can be tenably relied upon.

62. That apart, unlike the cases where the Department exercises lien over the goods cleared/released under a valid Bond and/or Bank Guarantee, when the confiscation proceedings are initiated under Section 124 of the Act, the decision of the Apex Court in Navayuga Engineering cited above has laid down in no uncertain terms that the obligation to pay duty and other charges under Section 125(2) will arise only when the owner of goods exercises the option to pay fine for redemption of goods and the Department accepting it. Therefore, in such cases, the implication of a person refraining from exercising such an option to pay the redemption fine being imposed in the case of goods that are physically unavailable for confiscation, also bears examination. This is necessary to evaluate

whether embarking on the course of action as prayed for by the Revenue, namely of confiscating the goods that are not physically available and imposition of redemption fine thereon, as in the instant case, has any conceivable merit. The decision of the Apex Court in *Navayuga Engineering* cited above is an authority for the proposition that when the confiscation proceedings are initiated under Section 124 it is only consequent to the exercising of the option to pay fine in lieu of confiscation that the person who is paying such fine would then have the obligation to pay duty and other charges. This leads to the inexorable conclusion that when the person being called upon to pay fine in lieu of confiscation, refrains from exercising such option, not only such fine, but the duty and other charges, of which too the obligation to pay arises only consequently, cannot even be categorised as dues that are recoverable from such person. This inevitably makes such imposition of redemption fine on goods which even though held liable to confiscation but in fact have neither been confiscated nor physically available, a superfluous exercise devoid of any rationale. In fact, there is no mechanism, or any means conceivable by any stretch of imagination, that would allow the Department to recover the fine in lieu of confiscation imposed and the attendant duty and other charges in such cases, should the person choose to refrain from exercising the option to pay fine in lieu of confiscation.

63. We also find that the decision in *Weston Components Ltd. Vs. Commissioner of Customs, New Delhi 2000 (1) TMI 45 SC* relied upon by the Ld. A.R. is inapplicable in the instant case as there is no evidence of the goods at Annexure E of the SCN having been released on a specific application by the appellant and a consequent bond executed, especially given the fact that in the instant case there is no evidence of a valid bond or bank guarantee covering these goods in existence. The decisions in *Commissioner of Customs Vs. M/s. Madras Petrochem Ltd. Customs Excise & Service Tax Appellate Tribunal 2020 (1) TMI 846, Madras High Court*, and *M/s. Pentafour Solec Technologies Ltd., Mr. S.N. Rajan, Managing Director and Mr.V.Ramakrishnan, Chairman Vs. Commissioner of Customs, Chennai 2024 (12) TMI 1037 CESTAT, Chennai*, which in turn follow *Weston Components*, is likewise distinguishable for the aforesaid reasons. Moreover in the decision in

Pentafour Solec case, there was a valid bank guarantee that was enforced unlike the aforesaid absence of evidence of a valid bond or bank guarantee in existence in the instant case. Therefore, in the light of the facts and circumstances of the instant case narrated above, and in light of the binding decisions of the Apex Court and High Courts elucidated supra, it is evident that the decisions cited at the bar and submitted as relied upon by the Ld. Authorised Representative are distinguishable on their peculiar facts and circumstances.

64. In view of our deliberations above, respectfully following the binding decisions of the Honourable Apex Court, High Courts and the Larger Bench as well as coordinate bench decisions of this Tribunal cited above, we hold that the impugned order in original to the extent it imposes penalties on the appellants herein cannot be sustained and is liable to be set aside to that extent. Ordered accordingly. Given our findings that the Adjudicating Authority has fairly exercised his discretion in refraining from imposing redemption fine on the imported goods that are unavailable, we do not find any merit in the appeal preferred by the Department which is liable to be dismissed. Ordered accordingly.

In sum, the appellants appeals are allowed and they are entitled to consequential relief(s) in law, if any, and the Revenue's appeal is dismissed.

(Order pronounced in open court on 24.11.2025)

**(AJAYAN T.V.)**  
**MEMBER (JUDICIAL)**

**(M. AJIT KUMAR)**  
**MEMBER (TECHNICAL)**