

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 313 of 2010

(Arising out of Order-in-Original No.184/2010 dated 28.04.2010 passed by Commissioner of Customs (Airport), Integrated Cargo Complex, Meenambakkam, Chennai 600 027)

Shri. Asheesh Chatterjee

Moser Baer India Ltd.
23, Shah Industrial Estate,
2nd Floor, Off. Veera Desai
Road, Andheri (West),
Mumbai 400 053.

Appellant

VERSUS

Commissioner of Customs (Airport & Cargo) Respondent

Integrated Cargo Complex,
New Custom House,
Meenambakkam,
Chennai 600 027.

APPEARANCE:

Shri P.B Harish, Advocate for the Appellant
Ms. O.M. Reena, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41539/2025

DATE OF HEARING: 18.12.2025
DATE OF DECISION: 23.12.2025

Per Ajayan T.V.

Asheesh Chatterjee, the appellant herein, is aggrieved by the Order in Original dated 28.04.2010 (impugned order), imposing a penalty of Rs.15,00,000/- (Rupees Fifteen Lakhs only) on him under Section 112(a) of the Customs Act, 1962 (Act).

2. The relevant facts, as emanating from the Appeal records, are that the Directorate of Revenue Intelligence, Mumbai started an investigation into the import of recorded media containing foreign feature films, made by Moser Baer India Limited (MBIL) through various ports. Summons were issued to MBIL on 09.10.2007 to produce details of the imports and contract copies with foreign suppliers and payment details. MBIL vide

letter dated 12.10.2007 furnished the details and on the same day a statement was recorded from the Appellant herein who was then the Chief Finance Officer of MBIL. On 16.10.2007, MBIL paid Rs.1,30,01,831/- towards the differential duty. Thereafter statements were also recorded on different dates from Shri. Himanshu Dhakad, Deputy Manager (Finance) of MBIL. The investigation culminated in issuance of a show cause notice, invoking the extended period of limitation and, inter-alia, alleging that MBIL had paid customs duty only on the value equivalent to the cost of the recorded media, without including the payment made towards licence fee/royalty fee to the overseas supplier in the assessable value. The Notice alleged that in view of the intentional suppression of the sums paid in addition to the declared value, MBIL and the appellant have rendered the imported recorded media and its contents, liable to confiscation and for their acts of omissions and commissions they have also rendered themselves liable for penalty under Section 112(a)/(b) of the Customs Act, 1962. The Notice called upon MBIL to pay the differential duty, alongwith applicable interest and proposed penalties on MBIL under the provisions of Section 114A, 112(a) and/or(b) of the Customs Act *ibid*. The Notice also called upon the appellant to show cause as to why penalty should not be imposed on him under Section 112(a) and/or 112 (b) of the Customs Act, 1962.

3. After due process of law, the Adjudicating Authority confirmed the duty demands made and appropriated the amount already paid towards the entire duty amount of Rs.1,24,24,896/- and balance Rs.5,76,935/- towards the interest payable. A penalty of Rs.1,24,24,896/- was imposed on the importer MBIL under Section 114 A of the Customs Act, 1962 and a penalty of Rupees Fifteen lakhs was imposed on the appellant herein. Aggrieved, MBIL and the Appellant had preferred appeals before this Tribunal. The appeals of the importer MBIL and the Appellant were dismissed for default/non-prosecution by a Division Bench of this Tribunal vide Final Order No.40458 & 40459/2025 dated 21.04.2025.

4. Subsequently, the Appellant filed an application for restoration of his appeal and the Appeal, which was restored vide Miscellaneous Order No.40720/2025 dated 03.07.2025, came to be heard on 18.12.2025.
5. Shri. P.B. Harish, Ld. Advocate appearing for the appellant submitted that the SCN does not clearly indicate the provision of law invoked for imposition of penalty and by employing the words "section 112(a) and/or 112 (b) of the Customs Act, 1962", left room for confusion as to which provision of law is invoked to impose penalty, thereby rendering the show cause notice vague and unsustainable. Ld. Counsel submits that nowhere in the show cause notice or in the impugned order the department has clearly stated what was the act of commission/omission that rendered the goods liable to be confiscated. Reliance was placed on the decisions in ***Hindustan Steel Ltd v. State of Orissa, (1969) 2 SCC 627, CCE, Bangalore v Brindavan Beverages (P) Ltd, 2007 (5) SCC 388, UMC Technologies Pvt Ltd v Food Corporation of India and Anr- Hon'ble SC-Civil Appeal No.3687 of 2020 (arising out of SLP (C) No.14228 of 2019), B. Lakshmi Chand v Government of India, 1983 (12) ELT 322 (Mad)*** and ***Charandas Malhotra v Asst Collector of Customs, 1967 SCC online Cal 28*** in this regard.
6. Ld. Counsel further submits that the impugned OIO alleges that the appellant had abetted the company to evade the duty by not exercising due care and diligence. It is submitted that Section 112(a) of the Customs Act, 1962 has two aspects. The first being, 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 111 and the second one being abets the doing or omission of such an act. Reliance was placed on the decision in ***Amritlakshmi Machine Works, Mr. N.K Bramchari, Managing Partner, M/s. Amritlakshmi Machine Works v. CC(Import)- Customs Appeal 100 & 1010 of 2012-Bombay High Court and Rajeev Khatri v. CC (Export), 2023 (7) TMI 218-Delhi High Court*** in this regard. The Ld. Counsel prays that the appeal be allowed.

7. Ms. O.M. Reena, Ld. Authorised Representative appearing for the Respondent, reiterated the findings of the Ld. Adjudicating Authority. Ld. A.R emphasised that the Adjudicating Authority has categorically found that the appellant had abetted the company to evade the duty by not exercising due care and diligence while administering the accounts of the company. It is submitted that the penalty under Section 112(a) was therefore rightly imposed on the Appellant.
8. Heard the rival submissions, perused the appeal records as well as the citations submitted.
9. The solitary issue that arises for determination is whether the penalty imposed on the appellant under Section 112 (a) is legally sustainable.
10. It is seen that Section 112, as it prevailed during the relevant period, is as under:

" 112. Penalty for improper importation of goods, etc.

Any person,-

- (a) 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 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,-

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater;
- (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is higher:

- (iii) xxxx
- (iv) xxxx
- (v) xxxx "

11. It is seen that the Ld. Counsel has placed reliance on the decision in **B. Lakshmi Chand v Government of India, 1983 (12) ELT 322 (Mad)**, particularly paragraph 2 thereof, wherein after extracting from the provisions of Section 112, the Hon'ble High Court has held as under:

"Clauses (i) to (v) which then follow deal with the classes of penalties, depending on the categories of goods. A plain reading of the above clauses makes it clear that they are distinct and separate. There is a possibility that the act complained of could fall within both the categories; but if the penal action is proposed to be taken and proceedings are prosecuted and if they should culminate ultimately in the imposition of penalty, then the authorities must be clear in their mind as to whether either of the above clauses would apply or both would apply. The Supreme Court with reference to S. 167 (8a), of the Sea Customs Act, 1878, held in *Gianchand v. State of Punjab* - A.I.R. 1962 SC 496 that in the absence of any valid statutory provision in that behalf the onus of establishing the essential ingredients under that provision, necessary to bring home the offence to an accused is on the prosecution. Obviously the stress was on the essential ingredients which go to make up the offence. There cannot be a misconception or ambiguity with reference to the offence complained of because that would cast a cloud of doubt as to the essential ingredients and naturally the discharge of the burden of proof would be stifled. Proceedings should not be allowed to be prosecuted on vague basis and camouflaged hypothesis and prejudice must be presumed to have been caused to the accused in these circumstances. Clause (a) of S. 112 of the Act contemplates the doing of an act or omitting to do an act in relation to any goods, which act or omission would render such goods liable to confiscation under S. 111, or abetting the doing or omission of such an act. Clause (b) of S. 112 of the Act lays down that any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Sec. 111, shall be liable to penalty as per the clauses set out. S. 112(b) of the Act would be attracted only if the person has been concerned in the offence of importation or exportation of goods which are, for the time being, prohibited or restricted. If that clause is attracted, there should be specific reference to it in the proceedings initiated and the findings rendered, and if there is a failure to

do so, the order of penalty cannot be sustained. When the penal provisions are invoked and proceedings are prosecuted for the purpose of imposition of penalty, the matter should not be dealt with in the sphere of ambiguity. There should be precision in the application of the provisions of the Act and it cannot be done in a camouflaged manner. There should be specific allegations even in the show cause notice and as well as in the subsequent proceedings and the ultimate orders to be passed by the authorities under the Act as to which of the clauses are attracted and as stated above, there is a possibility that on the facts of a particular case, both the clauses could also be attracted. In the absence of such specific allegations and specific findings, it is not possible to sustain the proceedings and the ultimate orders passed thereon. If the Customs authorities take recourse to any of the clauses dealing with the penalty, their order must further indicate the amount of duty payable in respect of the goods in question which was not paid."

12. While one can have no quarrel with the elucidation supra, what is also germane is that which has been stated by the Hon'ble High Court in paragraph 3 thereafter, which is as under:

"**3.** I have been taken through the show cause notice and as well as the orders passed by the authorities under the Act in the present case. **There is only the bare quoting of S. 112 of the Act and there is no reference to either to clause (a) or (b) or both of S. 112 of the Act. The essential ingredients have not been specifically set out with reference to either of the clauses. Hence, it has got to be held that there was no making up of mind either at the earlier stage or at the subsequent stage of the prosecution of the proceedings and the passing of the orders thereon as to which of the clauses would be attracted in the instant case.** The whole matter has been dealt with in a sphere of ambiguity. **The present case is not a case where a wrong provision has been quoted, so that it can be stated that it was due to a *bona fide* error, which did not vitiate the jurisdiction of the Authority. As stated above, this is a case where there had been a failure to apply the mind as to which of the clauses is relevant and would be attracted.** The power and the discretion given to the Authority functioning under S. 112 of the Act are judicial in character and are open to judicial review, and if they are found to have been exercised on irrational and ambiguous basis, the court will strike down the orders."
(emphasis supplied)

13. Thus, it is evident that the Hon'ble High Court has, on a perusal of the facts of the said case, found that Section 112 was only referenced without the essential ingredients of Section 112 of the Customs Act, under clause (a) or (b) of Section 112 of the Customs Act being detailed. When the Court has said that there is a possibility of both the provisions being attracted, it found that merely referencing the section, without specifying its ingredients was fatal. Pertinently, the Court also pointed out that the said case was not a case where a wrong provision has been quoted, so that it can be stated that it was due to a *bona fide* error, which did not vitiate the jurisdiction of the authority, thereby also implying that even in cases where a wrong provision has been quoted, if the authority does have jurisdiction, that *per se* does not vitiate the jurisdiction of the authority. It was also found that there was no making up of the mind even at the subsequent stage of the prosecution of the proceedings and passing of the orders thereon. Therefore, what was held in paragraph 2 has also to be appreciated in the context of what was stated in paragraph 3.

14. Such is not the situation prevailing in the present case. In this case, the SCN, at para 9(e), while charging the appellant with "intentional suppression of the sums paid in addition to the declared value", has thereafter stated at para 9(k) that the appellant had, by his acts of omission and commission, rendered himself to penalty under section 112(a) and 112(b) and gone on to put the appellant to notice as to the ingredients of both the clauses(a) and (b) of 112, while calling the appellant to show cause why penalty should not be imposed on him under Section 112(a) and /or 112 (b). This satisfies the requirement of paragraph 2 of the aforesaid decision in Lakshmichand case. Therefore, in such circumstances, the reliance placed by the Appellant on the decisions in ***Bangalore v Brindavan Beverages (P) Ltd, 2007 (5) SCC 388, UMC Technologies Pvt Ltd v Food Corporation of India and Anr- Hon'ble SC-Civil Appeal No.3687 of 2020 (arising out of SLP (C) No.14228 of 2019), B. Lakshmichand v Government of India, 1983 (12) ELT 322 (Mad)*** and ***Charandas Malhotra v Asst Collector of Customs, 1967 SCC online Cal 28*** to contend that the notice was vague and did not put the appellant to notice adequately, is misconceived. Be that as it may, whether the Department has brought

home the charges as alleged, which is an entirely different matter, is further examined infra.

15. It is seen that in the adjudication proceedings, the Adjudicating Authority has found that the appellant has "abetted the company to evade the duty by not exercising due care and diligence while administering the accounts of the company" and gone on to impose the penalty under Section 112(a) of the Customs Act, 1962 on the Appellant.
16. At this juncture, it is apposite to refer to the decision of the Hon'ble High Court of Delhi relied on by the Appellant, rendered while deciding CUSAA No. 3 of 2021 and C.M. Appl. No. 5517 of 2021, decided on 4-7-2023, and reported as ***Rajeev Khatri v CC (Export), 2023 (7) TMI 218-DELHI HIGH COURT : (2023) 9 CENTAX 412 (Del)***. Therein, it was held by the Hon'ble Delhi High Court as under:

"27. There is no cavil that mens rea is not a necessary element for imposing penalty under section 112(a) of the Customs Act. The penalty imposed for failure to perform a civil obligation is required to be distinguished from a penalty imposed as a punishment for committing a crime. Whereas in the latter case, it would be necessary to establish that a person committing the crime had the intent or the knowledge of committing such a crime; there is no such requirement in case of penalty for default in compliance of a statute imposing a civil obligation, unless the words of that statute indicate otherwise. The aforesaid proposition has been stated in Corpus Juris Secundum ¹ in the following words:

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

"Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income-tax Officer under section 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 1966-67."

28. In Gujarat Travancore Agency, Cochin v. Commissioner of Income Tax, Kerala, Ernakulam: (1989) 3 SCC 52/1989 (42) E.L.T. 350 (S.C.)/[1989] 44 Taxman 218 (S.C.), the Supreme Court had noted the

aforesaid obligations and held that it is not necessary to establish an element of mens rea for imposing a penalty under section 271(1)(a) of the Income-tax Act, 1961; that is, penalty leviable if the assessee without reasonable cause, fails to furnish the return of total income within the stipulated time.

29. In *Indo-China Steam Navigation Co. Ltd v. Jasjit Singh, Additional Collector of Customs Calcutta & Ors.*: AIR 1964 SC 1140/1983 (13) E.L.T. 1392 (S.C.)/1964 taxmann.com 2 (S.C.), the Constitution Bench of the Supreme Court had rejected the contention that it was essential to establish mens rea in respect of levy of penalty under the Sea Customs Act, 1878 for violating the provision of Section 52A of the Sea Customs Act, 1878.

30. Thus, indisputably, persons who have committed the acts of omission or commission in relation to goods that rendered them liable for confiscation, are liable to pay the penalty as stipulated under section 112(a) of the Customs Act, without any requirement to establish their mal intent. However, the same principle would not apply to persons who are alleged to have abetted such acts of omission or commission. **This is because, abetment, necessarily requires, at the minimum, knowledge of the offending Act.**

31. The use of the expression 'abet' in Section 112(a) of the Customs Act, makes it implicit that the person charged, who is alleged to have abetted the acts of omission or commission, has knowledge and is aware of the said acts. A plain meaning of the word 'abet' means instigation, aid, encouragement of an offence². It necessarily involves the knowledge that the act being abetted is wrong.

32. The Black's Law Dictionary³ defines the expression 'abet' as under:
 "1. To aid, encourage, or assist (someone), esp. in the commission of a crime <abet a known felon>. 2. To support (a crime) by active assistance <abet a burglary>."

33. In *Queen v. Coney & Ors.* (1882) 8 Q.B.D. 534: the Court for Crowned Cases Reserved held as under:

"To constitute an aider or abettor, some active steps must be taken, by word or action, with intent to instigate the principal or principals.

Encouragement does not, or necessity, amount to aiding and abetting. It may be intentional or unintentional. A man may unwittingly encourage another in fact by his presence, by misinterpreted gestures, or by his silence or non-interference - or he may encourage intentionally by expressions, gestures, or actions, intended to signify approval. In the latter case, he aids and abets; in the former he does not. It is no criminal offence to stand by a mere passive spectator of a crime, even of a murder. Noninterference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it, though he might reasonably be expected to present it, and had the power so to do or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he willfully encouraged, and so aided and abetted. But it would be purely a question for the jury whether he did so or not."

34. Section 3(1) of the General Clauses Act, 1897 expressly provides that the expression 'abet'⁴ would have the same meaning as in the Indian Penal Code, 1860 (hereafter 'the IPC').

35. Section 107 of the IPC explains the meaning of the expression 'abetment of a thing'. The said Section of the IPC reads as under:

"107. Abetment of a thing. —A person abets the doing of a thing, who—

First. — Instigates any person to do that thing; or

Secondly. — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. — A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully

represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2. — 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 aid the doing of that act."

36. Thus, in the context of Section 112(a) of the Customs Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of commission or omission that render the goods liable for confiscation.

37. It is apparent from the above that the knowledge of a wrongful act of omission or commission, which rendered the goods liable for confiscation under section 111 of the Customs Act, is a necessary element for the offence of abetting the doing of such an act.

38. In *Shree Ram v. State of U.P.*: 1975 3 SCC 495, the Supreme Court held as under:

"6.....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 aids, 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 aid 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. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third para of Section 107."

39. In *Amritlakshmi Machine Works v. The Commissioner of Customs (Import)*, Mumbai: 2016 (335) E.L.T. 225 (Bom.) (FB)/[216] 66 taxmann.com 49 (Bom.)(FB), a Full Bench of the Bombay High Court had considered the aforesaid issue and held that the word 'abetment' is required to be assigned the same meaning as under section 3(1) of the General Clauses Act, 1897. The court further opined as under:

"31.**Mere facilitation without knowledge would not amount to abetting an offence.** Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof "Any person - (a) who in relation to any goods does or omits to do any act" would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112(a) of the Act is only to make person of first degree in relation to the act or omission strictly liable. **Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them.** Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any mens rea on his part would bring all business to a half as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty."⁵

40. We respectfully concur with the aforesaid view. This view has also been consistently followed by the Tribunal.

1. Volume 85, Page 580, Paragraph 1023

2. Simpson, J. A., & C., W. E. S. (1989). *The oxford english dictionary* (2nd ed., Vol. 1). Clarendon Press.

3. "Abet." *Black's Law Dictionary*, 10th Edition, Edited by Bryan A. Garner, 10th ed., West, 2014, pp. 4-4.

4. 3. Definitions -In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

(1) "abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860);

5. Majority opinion delivered by M.S. Sanklecha, J." **(Emphasis supplied)**

17. Bearing the observations in the above Judgement in mind, on an examination of the Appeal records what emerges is that in the instant case, neither the SCN nor the impugned order discusses as to how the appellant has abetted MBIL in the alleged undervaluation of goods. While the impugned Order does not indicate that the statement of the appellant has been proven to be relevant in terms of Section 138B, and that only thereafter the Adjudicating Authority has placed reliance on the statement; which itself renders such reliance placed on the statement of the appellant untenable; de hors this fact, even for arguments sake, if the statement is to be taken to be relevant and admissible, still, it is found that the statement does not support the finding of the Adjudicating Authority, namely, that by not exercising due care and diligence while administering the accounts of the company, the appellant has abetted the Company to evade duty. The statement of the appellant, among other things, merely narrates that the goods were sent by the foreign supplier through courier who completed all the customs formalities on the basis of the invoices issued by the supplier. The courier thereafter is stated to have raised an invoice on the importer at the end of every month detailing the consignments imported and the customs duties paid on their behalf, which was then collected. Further, the statement of the appellant does not indicate that the allegation of intentional suppression of the sums paid in addition to the declared value, which is the allegation made in the SCN, was put to the appellant at any point in time. On the contrary, the statement indicates that the appellant has stated that he was not aware if licence fees had to be included in the value.
18. Furthermore, apart from the reliance on the said unproven statement, there is no evidence let in by the Department of any intentional act on the part of the appellant that would constitute abetment of any act or omission in relation to the goods that have been held liable to confiscation. Be that as it may, while the SCN has alleged "intentional suppression of the sums paid in addition to the declared value" the adjudicating authority has not upheld the allegation and has only rendered a finding that the appellant has "abetted MBIL to evade the duty by not exercising due care and diligence while administering the accounts of the company." This tribunal is of the considered view that

such a finding is a mere ipse dixit, in the absence of a discussion on any admissible evidence available and relied on which would show that the appellant has knowingly instigated or conspired with or abetted the doing of any act or omission that has rendered the goods liable to confiscation. The finding of deficiency in exercising due care and diligence while administering the accounts of the company which has been rendered by the Adjudicating Authority, even if taken at face value, at best may amount to negligence in the observance of duty on the part of the appellant. However, that in itself does not translate into evidence or proof of the appellant having given any instructions knowingly pertaining to the handling of the import related activities so as to render the goods liable to confiscation attracting the label of an act of "abetment" and consequently warranting the penalty under Section 112 (a) presently imposed. In sum, the findings in the impugned Order in Original, in so far as it relates to the appellant, is thus squarely opposed to the Judgement of the Honourable High Court of Delhi reproduced above as to what constitutes abetment so as to attract the penalty under Section 112(a). Therefore, considering the above facts, and adhering to the decision of the Hon'ble High Court as aforementioned, this Tribunal is of the considered view that the impugned order in original to the extent it imposes penalty on the appellant under Section 112(a) is unsustainable and is liable to be set aside to that extent. Ordered accordingly.

The appeal is allowed in the aforesaid terms, with consequential relief(s) to the appellant in law, if any.

(Order pronounced in open court on 23.12.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)