CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL No. 1010 of 2005

(Arising out of Order-in-Original No. VIII/ICD/6/TKD/Adj/Comm/54/03/7573 dated 17.03.2005 passed by the Commissioner of Customs (Adjudication), Tughlakabad, New Delhi)

Manoj Shah **....Appellant**
401, Devendra Apartments, D-Wing Rokhadia Lane,
Borivali, (W),
MUMBAI

Versus

Commissioner of Customs **....Respondent**
(Adjudication)
ICD, Tughalkabad
NEW DELHI

APPEARANCE:

None for the Appellant
Shri Shiv Shankar, Authorised Representative of the Department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing/ Decision: May 07, 2025

FINAL ORDER NO. 50796/2025

JUSTICE DILIP GUPTA :

Manoj Shah[1] has filed this appeal to assail the order dated March 17, 2005 by which a penalty of Rs. 15,00,000 lakhs has been imposed on him under section 112 of the Customs Act, 1962[2].

2. Case has been called out, but no one has appeared on behalf of the appellant. When the matter was taken up on December 10, 2024,

1 the appellant
2 Customs Act

the Bench made it clear that the matter may be decided on merits even if the appellant does not appear. The appeal is, accordingly, being decided on merits after hearing Shri Shiv Shankar, learned authorized representative appearing for the department.

3. The factual aspect as stated in the impugned order is reproduced below :

> "**M/s Ashok Metal Industries have cleared 45.490 MT of the copper scrap against an advance licence No.03031030 dated 30th July, 99, through ICD Patparganj. This licence was shown to have been originally issued in the name of M/s. Super Abbrasive Tools by JDFT Mumbai on 23 July, 99 with the port of registration at JNPT and this advance licence was shown as transferred to M/s UNO Enterprises and this licence was further shown as transferred to M/s Ashok Metal Industries. Similarly, M/s Ashok Metal Industries have cleared 69.798 MT of copper scrap against an Advance Licence No.03030000 dated 20th June, 99 through ICD, Patparganj which was originally issued in the name of M/s Super Abbrasive Tools with the port of registration at JNPT and this licence was further shown to have been transferred to M/s Ashok Metal Industries**. M/s Ashok Metal Industries have cleared 67.725 MT of Copper Scrap through ICD, Patparganj against advance licence no. 0310005986 dated 20.8.1999 with the port of registration at JNPT. This licence was in the name of M/s Star Instustries and were shown to have been transferred to M/s Ashok Metal Industries. JDFT, Mumbai has given in writing that they had not issued any above mentioned advance licences to M/s Super Abbrasive and Star Industries. Representatives of above two companies i.e. M/s Super Abbrasive and M/s Star Industries in whose name the licence in question was shown to have been issued denied having been issued any advance licence for import of the copper/scrap. They further denied of having transferred any advance licence to M/s UNO Enterprises or to M/s Ashok Metal Industries and their letterheads used to show the transfer of papers are not genuine. **From the report of the JDFT and statements of representative of M/s Super Abbrasive and M/s Star Industries, it is clear that the advance licences in question are not genuine. These are bogus and forged licences which were used by M/s Ashak Metal Industries to import the 183.013 MT of the copper scrap without payment of duty. Since the licence against which the clearances were made bogus and forged, no duty concession is available to the importer**

> **and duty of Rs.38,96,221/- is leviable on goods and is to be recovered from the importer**.
>
> xxxxxxxxx xxxxxxxxx xxxxxxxxx
>
> **Since in this case the party availed the exemption of goods against the conditions mentioned in the advance licence and advance licence in question to be found in bogus and forged, I hold it as non-observance of the conditions and accordingly, goods are liable for confiscation under Section 111(o) of the Customs Act and M/s Ashok Metal Industries is liable for penalty under Section 114 A of Customs Act and Mr. Sanjay Goel is liable to penalty under Section 112 of the Customs Act**.
>
> **[emphasis supplied]**

4. The Commissioner confirmed the duty upon the appellant under section 28 of the Customs Act and also imposed penalty. The relevant portion of the order passed by the Commissioner is reproduced below :

> "**From the above, it is clear that** Shri Bipin Shah, Vishawanath Jalan, **Manoj Shah**, Gautam Chaterjee, Manikchand Tarkar, Umesh Joshi have **connived along with Sanjay Goel Collectively and in their individual capacity and aided and abetted in the attempted evasion of customs duty Rs. 38,96,221/-. They have also abetted in obtaining and using the forged and bogus advance licence knowing fully that the goods were actually not permitted against said licences to be cleared duty free**. They dealt the goods liable for confiscation under Section 111(o) of the Customs Act and accordingly, they are liable for penal action under Section 112 of the Customs Act."

5. It is this part of the order imposing a penalty of Rs. 15,00,000/- upon the appellant that has been assailed in this appeal under section 112 of the Customs Act. It is clear from the order that forged licence was used for evasion of customs duty and the appellant abetted in obtaining the forged advance licence. The appellant in his

letter dated February 07, 2000 also confessed his active role/involvement in the racket.

6. The Supreme Court in **Munjal Showa Ltd**. **versus Commissioner of Customs and Central Excise (Delhi-IV) and M/s Friends Trading Co. Versus Union of India and Ors.[3],** while dealing with a case where a forged scrip was utilized, held that exemption benefit cannot accrue on the basis of such a forged licence.

7. There is, therefore, no infirmity in the impugned order. The appeal is, accordingly, dismissed.

(Dictated & pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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