CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL No. 1011 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. 50797/2025

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 B.M. Non-Ferrous Alloys Pvt.Ltd. have cleared 229.160 MTs of copper scrap against three advance licences No.03031025 dated 23.7.99, No. 03029892 dated 3.6.99 and No.03029112 dated 28.4.99, through ICD, Patparganj and they attempted to make duty free clearances of 69.930 MT of copper scrap against advance licence no.03030976 dated 27.7.99 under Bill of Entry No. 150183, 150184 and 150185, all dated 31" January, 2000. All these licences were shown to have port of registration at JNPT, Nhava Seva. The licence No.03031025 dated 23.7.99 was shown to have been issued to M/s Vinipa Exports. This advance licence was shown as transferred to M/s UNO Enterprises and further shown to have been transferred to M/s B.M. Non-Ferrous Alloys Pvt. Ltd.** Similarly, the advance licence no.03029892 dated 3rd June, 99 was shown to have been issued in the name of M/s Oriental Containers and was further shown as transferred to M/s B.M. Non-Ferrous Alloys Pvt. Ltd. Another licence no. 030329112 dated 28th April, 1999 was shown to have been originally issued in the name of M/s Supriya Chemicals and this advance licence was shown to have been transferred to M/s B.M. Non-Ferrous Alloys Pvt. Ltd. Advance licence No.03030976 dated 27th July, 99 was shown to have been issued in the name of M/s Star Trading. This licence was shown as transferred to M/s Bright Enterprises, Mumbai and was further shown to have been transferred to M/s B.M. Non-Ferrous Alloys Pvt. Ltd. JDFT Mumbai has given in writing that they have not issued any of the above mentioned 4 advance licences. Representatives of M/s Vinipa Exports, M/s Oriental Containers, M/s Supriya Chemicals and M/s Star Trading have stated in their statements that none of them have been issued any advance licence for import of the copper scrap. They further denied of having transferred any advance licence to M/s B.M. Non-ferrous Alloys Pvt. Ltd. and the letter heads used to show the transfer of papers are not genuine. **From the report of JDFT and the statements of representatives of M/s Vinipa Exports, M/s Oriental Containers, M/s Supriya Chemicals and M/s Star Trading, it is clear that advance licences in question are not genuine. These are bogus and forged licences, which were used by M/s B.M.**

Non-ferrous Alloys Pvt. Ltd. to import the copper scrap without payment of duty. Since the licences against which the clearances were made are bogus and forged, no duty concession is available to the importer and the duty of Rs.63,71,517/- is leviable on the goods and is to be recovered from the importer......

xxxxxx xxxxxxx xxxxxxx

Therefore, I confirm the duty amount of Rs 63,71,517/- under Section 28 of the Customs Act. 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 B.M. Non-ferrous Alloys Pvt. Ltd. is liable for penalty under Section 114A of Customs Act and Mr. Anil 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 Anil Goel Collectively and in their individual capacity and aided and abetted in the attempted evasion of customs duty Rs. 63,71,517/-. 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)

Golay

3 2022 (9) TMI 1076 – Supreme Court