CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 3867 of 2012

(Arising out of Order-in-Original No. 13/RKB/CC/NCH dated 27.08.2012 passed by the Commissioner of Customs (Adjudication), New Delhi)

Shri Sanjay Sachdeva **....Appellant**
(Through Sh. G Tushar Rao, Advocate)
C-81, L.G.F., Neeti Bagh, New Delhi-110049

Versus

Commissioner of Customs, (Adjudication) **....Respondent**
New Custom House
Near IGI Airport,
New Delhi

APPEARANCE:

Mr. Nikhil Gupta, Mr. Rochit Abhishek and Mr. Prince Nagpal, Advocates for the Appellant
Mr. Shiv Shankar, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: September 08, 2025

FINAL ORDER NO. 51278/2025

JUSTICE DILIP GUPTA

The appellant has sought the quashing of that part of the order dated 27.08.2012 passed by the Commissioner (Adjudication) that imposes a penalty of Rs. 25 lakhs upon the appellant as the then Managing Director of M/s Safetag International under the provisions of section 114 of the Customs Act, 1962[1].

2. It transpires from the records that M/s Safetag International exported readymade garments and on intelligence received that it was involved in undue export benefits, the Officers of the Directorate of Revenue Intelligence carried out a detailed investigation.

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1 the Customs Act

3. A show cause notice dated 15.11.2002 was issued to seven noticees, including M/s Safetag and the appellant. The allegations made in the show cause notice was that the noticees had fraudulently availed duty drawback of Rs. 1,03,67,746/- by inflating the actual value two to three times and the goods also had not reached Russia, which was the declared destination place.

4. The Adjudicating Authority found as a fact, based on report sent from the Russian authority, that the goods did not reach Russia. Accordingly, an order was passed against M/s Safetag International for recovery of drawback of Rs. 1,03,67,746/- with interest. A penalty of Rs. 50 lakhs was also imposed upon M/s Safetag under section 114 of the Customs Act.

5. The Adjudicating Authority also imposed a penalty of Rs. 25 lakhs upon the appellant as he was then the Managing Director of M/s Safetag International under the provisions of section 114 of the Customs Act. The finding recorded in the matter of the appellant are in paragraph 81 of the order and are:

> "**81. To my mind, another noticee Shri Sanjay Sachdeva was the 2nd powerful person of M/s Safetag as revealed from the investigations including his own statement and statements of other concerned persons.** Mr. Sanjay Sachdeva has denied of having any share in M/s Safetag and stated that whatever he did was on the directions of Tom Abbas. Even assuming that his plea is correct, it does not absolve him of his willful wrong doings, fraud perpetrated by him. **He himself has admitted to have visited Russia many a times and his Accountant Sh. Mangal Dev has pointed him amongst the persons having decision making powers and controlling transactions. Other noticees, namely, Jaideep Mirchandani & N.K. Gupta have also described his key role in the company which ultimately resulted into fraudulent drawback claims and loss to Govt. exchequer to the tune of more than rupees one crore.** I, therefore find him equally responsible of defrauding the Govt. and availment of inadmissible drawback. By his acts of omission

> and commission, he has made himself liable for penal action as proposed in the show cause notice."
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> **(emphasis supplied)**

6. Shri Nikhil Gupta learned counsel for the appellant assisted by Rochit Abhishek pointed out that penalty has been imposed upon the appellant under section 114 of the Customs Act, 1962 basis the statements of the accountant Mangal Dev and co-noticees Jaideep Mirchandani and N.K. Gupta, which statements were recorded under section 108 of the Customs Act. Learned counsel states that it is on the basis of these statements that the Adjudicating Authority came to a conclusion that by acts of omission and commission, the appellant had made himself liable to penalty under section 114 of the Customs Act. Learned counsel submitted that as the procedure contemplated under section 138B of the Customs Act was not followed, the statements recorded under section 108, which have been relied upon, cannot be considered as relevant.

7. Learned authorized representative appearing for the department, however, supports the imposition of penalty upon the appellant as he played a significant and active role in the fraudulent export scheme executed by M/s Safetag International.

8. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

9. Section 114 of the Customs Act, under which penalty has been imposed upon the appellant, is as follows:

> "**114.** 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, shall be liable:
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> (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, whichever is greater.
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> (ii) In the case of goods under claim for drawback to a penalty not exceeding five times the amount of drawback claimed or one thousand rupees, whichever is greater."

10. A perusal of paragraph 81 of the impugned order, which has been reproduced above, shows that penalty has been imposed upon the appellant only on account of the statements made by three persons under section 108 of the Customs Act.

11. The issue that arises for consideration is whether the statement recorded under section 108 of the Customs Act can be considered as relevant evidence under section 138B of the Customs Act.

12. In this connection, reference can be made to the decision of the Tribunal in **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[2]. The Tribunal examined the provisions of sections 108 and 138B of the Customs Act as also the provisions of sections 14 and 9D of the Central Excise Act, 1944 and observed as follows:

> "21. It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act

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2. Excise Appeal No. 51148 of 2020 decided on 01.04.2025

> or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain."

13. After examining various judgments of the High Court and the Tribunal, the Tribunal observed as follows:

> "28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has

> been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence."

14. In view of the aforesaid decision of the Tribunal, the statements recorded under section 108 of the Customs Act cannot be considered as relevant. As these statements were made the basis for imposition of penalty upon the appellant, the imposition of penalty cannot be sustained.

15. The impugned order, in so far as it imposes penalty upon the appellant cannot, therefore, be sustained and is set aside. The appeal is, accordingly, allowed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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