CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 4

CUSTOMS APPEAL NO. 251 OF 2012

[Arising out of Order-in-Original No. 04/SU/COMMR/2012 dated 21.03.2012 passed by the Commissioner of Customs (Preventive), New Delhi]

SUSHANT AGRAWAL ....**APPELLANT**
R/o E-9, Panchsheel Park,
New Delhi

VERSUS

COMMISSIONER OF CUSTOMS-NEW DELHI(PREV) ....**RESPONDENT**
PATPARGANJ
ICD Patparganj, East Delhi
110096

Appearance

Shri Sharad Chand Srivastava and Ms. Gunjan Tanwar, Advocates for the Appellant

Shri Girijesh Kumar, Authorised Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51701 /2025

DATE OF HEARING : 24/09/2025
DATE OF DECISION : 11/11/2025

P. V. SUBBA RAO

The Order dated 21.3.2012[1] passed by the Commissioner of Customs (Preventive), New Delhi in the *de novo* proceedings is assailed by Shri Sushant Agarwal[2] in this appeal. The facts of the case are as follows.

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1 Impugned order
2 Appellant

2. Acting on intelligence, the officers of Directorate of Revenue Intelligence[3] searched various firms owned and/or controlled by the appellant viz., S.R. Textiles, Om Textiles and Hanuman Trading Co. It was found that the appellant had imported fabrics which were, at the relevant time, covered by section 124 of the Customs Act, 1962[4] and hence if they were seized under the reasonable belief that they were smuggled goods, the burden of proving that they were not smuggled rested on the person from whom they were seized.

3. In all, the appellant had imported fourteen lots of fabrics and after investigation, DRI issued a Show Cause Notice dated 19.6.2004[5] proposing confiscation of only Lot Nos. 2,4,7,9,11,12,13 & 14 admeasuring 66,253 metres of fabric with market value of Rs. 44,35,030/-. After the SCN was issued, the appellant submitted in reply, documents in defence to show that the seized goods were not smuggled but had been legitimately imported.

4. The Commissioner, however, refused to consider the evidence submitted by the appellant on the ground that it was not submitted during investigation and, therefore, confiscated the goods and imposed penalties. On appeal, this Tribunal, by Final Order C/315/11 dated 25.5.2011 remanded the matter to the Commissioner with a direction to consider the documents. The relevant portion of the order is as follows:

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3. DRI
4. Act
5. SCN

"…. It is a settled principle of judicial prudence that documents speak louder than the oral evidence. As such we are of the view that the adjudicating authority was duty bound to examine the said documents produced by the appellants. Similarly, their contention that the same were subsequently retrieved by them from the resumed documents is required to be looked into….."

5. Accordingly, the impugned order was passed. In paragraph 48 of the impugned order, the Commissioner examined the evidence produced by the appellant with respect to each lot and rejected the evidence mainly on two grounds- the documents submitted were contrary to the statements made under section 108 of the Act during investigation and that the documents had either no marks and numbers or that they did not match with what were recorded in the Panchnama.

6. Learned counsel for the appellant made detailed submissions regarding the marks and numbers and the documents to advance his argument that the documents were, indeed, of the seized goods. These have been summarized in a neat table annexed to the synopsis submitted before us. The table is reproduced below.

As per Panchnama dated 29/30.09.2003					Test Report as per Show Cause Notice	BE No. & Dt.	Importer	Remarks	Commissioner's Finding
Let No.	Description	Qty. Physically found	Marks	Country of Origin					
2	Polyester Knitted Fabrics	12300 Meters (119 rolls)	RTCOT superior quality	TAIWAN	Knitted fabric having soft nappy finished on one side, composed of polyester multifilament yarn	218552 dt. 06.12.1999	Vaibhav Textiles	Marks mentioned in the Panchnama are not the Shipping Marks These goods were seized by the DRI vide Panchnama dated 12.12.2000, however, release after investigation.	As per the documents submitted by the party in respect of this lot, the said goods were imported through ICD, whereas, it was claimed by the party in his statement dated 07.10.2003 that the goods were imported through Kolkata Port. The claims are thus contrary and no credence can be given to the documents submitted by him which is an act of afterthought. Further, no marks were declared in the Bill of Entry submitted by the party, whereas as per the Panchnama dated 30.09.2003, marks such as "RTCOT Superior Quality" was visible on the fabrics.
4	Flock Fabric	12080 Meters (49 Bales) 22060 Meters	Kabool Ltd. Red Patta with Sun		Flock fabric base: composed of Polyester multifilament yarn, flock:	12373 dt. 28.09.2002 673 dt. 18.09.2002	Hanuman Trading Company	The B/E No. 12373 dt. 28.09.2002 was submitted to DRI at the time of seizure	The party at the time of drawing of Panchnama dated 30.09.2003 stated that 12080 meters of goods were imported vide Bill of Entry No. 12373 dt. 28.09.2002 and the Bill of Entry in respect of 22060 meters has

		(118 bales)			made of viscose/comp: base knitted fabric-63.3%, balance-flocks & adhesive.			Marks mentioned in the Panchnama are not the Shipping Marks.	not been received from Mumbai. He later claimed that the relevant document (Bill of Entry No. 673 dt. 18.09.2002) has not been culled out of resumed documents. No documents pertaining to 12080 meters were furnished by the party and is claimed by him. Further, on examination of the document i.e. B/E No. 673 dated 18.09.2002, it is seen that no marks such as 'Kabool Ltd., Red patta with sun' were declared under Marks and numbers column.
7	Coated Fabric	10332 Meters (57 rolls)	20008/ 34	TAIWAN	Woven fabric of spun yarn along one side & nylon multifilament yarn along other side, coated on one side with polymeric material/ composition-polyester 58.6%, Nylon-35% bal-polymeric material.	113356 dt. 30.10.2000	Vaibhav Textiles	This B/E was a subject matter of investigation under Show Cause Notice DRI F. No. 23/107/2000/ DZ(Pt.VI.). The Show Cause Notice was dropped vide Order-in-Original No. AKR/CC/ICD/ TKD/28/2002 and the goods were released unconditionally.	
9	Net Fabric	3000 Meters (30 rolls)	No marks		Netled fabric composed wholly of multifilament yarn of polyester.	900604 dt. 10.05.2000	Vaibhav Textiles		It was reported by the party on 30.09.2003 that the goods belonged to other party. Whereas Bill of Entry No. 900604 dated 10.05.2000 is of M/s Vaibhav Textiles, Gurgaon, belonging to the party. The said Bill of Entry is in respect of 'Synthetic Mosquito Net Stock Ltd.', whereas it was described as 'Net Fabric's in the Panchnama dated 30.09.2003. The party has not submitted any records to show transfer of goods from Gurgaon to Okhla.
11	PVC Fabric (Leather Cloth)	6150 Meters 123 rolls	No marks		Woven fabric composed of blended spun yarn of polyester & viscose laminated on one side, polymeric material other than PVC. Composition - polymeric material-41.9%, bal-woven fabric (polyester-79.3%, bal-viscose)	I-719 dt. 09.08.2002	Hanuman Trading Company		It was claimed by the party on 30.09.2003, at the time of drawing of Panchnama, that the goods were 4-5 years old, whereas as per the documents submitted by him, the goods were just a year old. No evidence showing transfer of goods to Okhla, has been produced by the party.
12	Polyester Knitted Fabric	8228 Meters (185 rolls)	White strip	KOREA	Knitted fabric composed of single ply spun yarn of artificial staple fibres of celluloric origin together with polyester multifilament yarns. Composition - single sply spun yarn of artificial	10620 dt. 02.06.2000	Vaibhav Textiles	These Goods were imported in carton packing. The cartons were later removed and the fabric was stored in plythene covers tied with white strip.	As per the Panchnama dated 30.09.2003, the description of goods is 'Polyester Knitted Fabrics', whereas documents submitted (Bill of Entry No. 10620 dt. 02.06.2000 and invoice no. JD04 dated 14.04.2000) are in respect of 'Wrap Knit Fabrics-Stock Lot". Further, white strip was found on the goods of this lot at the time of drawing of the Panchnama dated 30.09.2003. The party at that time did not inform the officers that the said goods were imported in carton packing and later removed and was stored in polythene covers tied with white strip. His claim is an afterthought

					staple fibres of cellulosic origin-89.2%, bal-polyester multifilament yarn.				and bears no authenticity.
13	Processed Cotton Fabric	8452 Meters (176 rolls)	SH-794 SC-264/415		Cutpile woven fabric having ribed surface on one side, composed of single ply cotton yarn on one side & elastic yarn covered with single ply cotton yarn on other side. Piles-cotton, cotton-95.3%, bal-elastic yarn.	I-572 dt. 22.08.2003	Vaibhav Textiles	There is mis-recording of marks in the Panchnama. The actual marks are 236/415 which may be verified.	It was claimed by the party on 30.09.2003 that the goods of this lot were received only 2-3 days back. The documents submitted by the party show that the goods were imported well over three months ago from the date. Further, Marks on the goods (SC 264/415) do not tally fully with marks (236/415) declared in the Bill of Entry dated 22.08.2003.
14	Nylon Mesh	3650 Meters (73 rolls)	No marks		Printed still woven fabric (mesh type) having uniform square meshes, wholly composed of monofilamen ts of polyester.	1-456 dt. 08.12.1998	S. R. Textiles		As per Panchnama dated 30.09.2003, the goods were ‘Nylon Mesh’, whereas documents pertaining to ‘Printed Nylon Mesh for footwear’ has been submitted by the party.

7. The question which arises is whether or not the appellant has discharged his burden of proving that the seized goods were not smuggled by producing the above documents. The Commissioner rejected the documents pointing out the discrepancies with respect to each of the lots. The discrepancies were mainly on two grounds. The documents now submitted were contrary to the statements made under section 108 of the Act at the time of seizure and the marks and numbers of the goods recorded in the Panchnama at the time of seizure and the marks and numbers in the Bills of Entry do not match. In most cases, no marks and numbers were indicated in the Bills of Entry at all.

8. As far as the statements made during seizure under section 108 of the Act are concerned, as per section 138B of the Act, they are relevant to prove the truth of their contents if the adjudicating authority, after examining the person who made the statement as a witness, admits the statements as evidence. This section reads as follows:

> "**138B. Relevancy of statements under certain circumstances.**—
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> (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,--
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> > (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
> >
> > (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.
>
> (2) The provisions of sub-section *(1)* shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

9. Since the Commissioner did not examine the persons as witnesses and admit their statements as evidence, they are not relevant to this case. Any discrepancy between the statements made and the Bills of Entry produced cannot be a ground to reject the Bills of Entry.

10. As far as the marks and numbers are concerned, it is possible that while filing Bills of Entry one was not careful enough

to fill all necessary columns correctly and marks and numbers may not have been mentioned. That, in itself, cannot be a ground to reject the Bills of Entry.

11. In view of the above, the Commissioner erred in rejecting the Bills of Entry produced by the appellant in defence to show that the seized goods were legally imported. Consequently, the impugned order confiscating the seized goods and imposing penalties cannot be sustained.

12. The impugned order is set aside and the appeal is allowed with consequential relief to the appellant, if any.

[Order pronounced on **11/11/2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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