

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH - COURT NO. I**

**E-HEARING**

**Customs Appeal No. 50166 of 2025**

(Arising out of Order-in-Original No. 07/2023/VCG/Pr. COMMR/ICD/Export/TKD dated 31.05.2023 passed by the Principal Commissioner of Customs, ICD (Export), New Delhi)

**Yogesh Mittal**

B-1/5C, Prasanna Apartment, Bhama Shah  
Marg, Model Town, Opposite Kirpal Bagh,  
Dr. Mukharjee Nagar, North West, Delhi-110009

**..... Appellant**

Versus

**Principal Commissioner of Customs  
ICD TKD, New Delhi**

**..... Respondent**

**APPEARANCE:**

Dr. G.K. Sarkar, Advocate for the Appellant  
Mr. Rajesh Singh, Authorised Representative for the Department

**CORAM :**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING/ DECISION: November 20, 2025**

**FINAL ORDER NO. 51798/2025**

**JUSTICE DILIP GUPTA**

This appeal has been filed by Yogesh Mittal<sup>1</sup>, supplier of fabrics to five exporting companies, to assail that portion of the order dated 31.05.2023 passed by the Commissioner that imposes a penalty of Rs. 25 lakhs upon him under section 114(iii) of the Customs Act, 1962<sup>2</sup>.

2. It transpires from the records that this order dated 31.05.2023 has disposed of four show cause notices dated 30.03.2016, 31.03.2016, 02.06.2017 and 17.02.2017 issued to various exporters, suppliers and

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**1 the appellant**

**2 the Customs Act**

purchasers. Against this order number of appeals were filed which were decided on 25.11.2024, the leading case being **G.D. Mangalam Exim Pvt Ltd vs. Commissioner of Customs**<sup>3</sup>. The appeals filed by the exporters and individuals were allowed and the appeals filed by the revenue were dismissed.

3. Learned counsel for the appellant states that the issues involved in this appeal is covered by the decision of this Tribunal in **G.D. Mangalam**. Learned authorized representative appearing for the department, however, supports the impugned order.

4. Having heard learned counsel for the appellant and the learned authorized representative appearing for the department we find that the issue involved in this appeal is covered by the decision of the Tribunal in **G.D. Mangalam**. The relevant portion of the decision is reproduced below:

"21. Both these supra, as well as confiscation under section 111 of Customs Act, 1962 with attendant penalties, rest upon the charge of overvaluation of the goods. Learned Senior Counsel pointed out the assessment under section 17 of Customs Act, 1962 before the goods were permitted for export remains untouched; Learned Authorized Representative has not disputed this. He, however, argued that evidence of overvaluation is not only sufficient but is overwhelming which, to us, begs the question of determination of overvaluation in the absence of legal authority to do so. Customs law is all about assessment of imported and exported goods and all else is but procedural stipulations to ensure that goods are subjected to assessment at the designated time and place. Value is, doubtlessly, crucial to such assessment under section 17 of Customs Act, 1962 when duties are ad valorem but, even if not, assessment, commenced under section 17 of Customs Act, 1962 upon entry made under section 46 of Customs Act, 1962 on import of goods and section

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**3 Customs Appeal No. 50137 of 2024 decided on 25.11.2024 (Tri. Delhi)**

50 of Customs Act, 1962 on export of goods, as the case may be, must be taken to the conclusion intended by law without which neither section 47 nor section 51 of Customs Act, 1962 can operate for removal of the goods from out of control of customs. An assessment may be altered if it has consequences from incorrectness, and in the absence of revision, through one of the processes prescribed in the statute, the determination remains unchanged. The concatenation of facts, even if ringing true, that may permit speculation of incorrect valuation does not suffice to alter the assessment. On top of that, any determination of overvaluation should pass muster as conforming to section 14 of Customs Act, 1962 by acceptance of declared value or by substitution empowered in Customs Valuation (Determination of Value of Exported Goods) Rules, 2007. It is common ground that there has been neither notice nor finding that the value of the exported goods have been re-determined to ascertain the extent of overvaluation sufficing to restrict both eligibility for drawback as well as 'duty credit scrips' to be used for discharge of duty liability on subsequent imports.

**22.** It is alleged in the show cause notice that the goods were misdeclared but it is section 113(d) of Customs Act, 1962 that has been invoked for confiscation of goods and held by the adjudicating authority to be so liable for enabling imposition of penalties under section 114 of Customs Act, 1962. Such confiscation is valid if goods prohibited for export are brought into a customs area. We do not find any justifiable reason for confiscation as it has not been evidenced that the goods, as described in the shipping bills, were prohibited for export. Even for sustaining confiscation for having been overvalued, it is necessary that substitute values should have been determined; if that were not, the mandate of law,

“(41) “value”, in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14”

in section 2 of Customs Act, 1962 would be superfluity. Consequently, it is not ascertained facts or admitted averment that establish overvaluation

but resort to the mandate of section 14 of Customs Act, 1962. The notice is silent on such proposal and neither the price of goods in the local market and the purchase price (even if evidenced which was not) nor the value declared at destination suffices as surrogate for value. The reliance placed on statements, which afford neither factual support nor circumstantial credibility in the absence of resort to section 14 of Customs Act, 1962, as evidence of overvaluation, has no acknowledgement in the scheme of valuation.

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There is, in consequence, no ground for goods to be held as liable to confiscation under section 113 of Customs Act, 1962 and for recourse to penalties under section 114 of Customs Act, 1962.

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**24.** The appeal of Shri Nitin Gupta of M/s Oak Shipping Services Pvt Ltd impugns the penalty imposed on him for having been ventured upon without notice, without service of documents and without being heard. That should suffice for setting the detriments aside but in the light of lack of sustainability of any of proposals in the notice insofar as confiscation of the exported goods is concerned, nothing remains for recourse to penal provisions against him. Likewise, the penalties imposed on the other individual appellants fail on the non-sustenance of recovery, both undertaken and proposed, and of the liability of the goods to confiscation."

5. In paragraph 22 of the aforesaid decision, the confiscation of the goods has been set aside. In such circumstances, penalty under section 114(iii) of the Customs Act imposed upon the appellant cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(order dictated in the open court)

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

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