

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

PRINCIPAL BENCH,  
COURT NO. I

**CUSTOMS APPEAL NO. 186 OF 2012**

[Arising out of the Order-in-Original No. 05/2012 dated 31/01/2012 passed by The Commissioner of Customs, New Delhi.]

**M/s Kool International,** .....Appellant  
1516-18, Shop No. 12, Pataudi House Road,  
Daryaganj, New Delhi – 110 002.

**Versus**

**Commissioner of Customs,** ....Respondent  
Inland Container Depot, Tughlakabad,  
New Delhi.

**WITH  
CUSTOMS APPEAL NO. 187 OF 2012**

[Arising out of the Order-in-Original No. 05/2012 dated 31/01/2012 passed by The Commissioner of Customs, New Delhi.]

**Shri Vikas Bothra, Proprietor of  
M/s Kool International,** .....Appellant  
1516-18, Shop No. 12, Pataudi House Road,  
Daryaganj, New Delhi – 110 002.

**Versus**

**Commissioner of Customs,** ....Respondent  
Inland Container Depot, Tughlakabad,  
New Delhi.

**APPEARANCE:**

Shri Amar Kumar Sinha, Advocate for the appellants.  
Shri Girijesh Kumar, Authorized Representative for the  
Department

**AND  
CUSTOMS APPEAL NO. 143 OF 2012**

[Arising out of the Order-in-Original No. 05/2012 dated 31/01/2012 passed by The Commissioner of Customs, New Delhi.]

**Shri Surendra Kumar,** .....Appellant  
Flat No. 32, Popular Apartments,  
Sector – 13, Rohini,  
New Delhi – 110 085.

**Versus**

**Commissioner of Customs,** ....Respondent  
Inland Container Depot, Tughlakabad,  
New Delhi.

**APPEARANCE:**

Shri Abhas Mishra, Advocate for the appellant.  
Shri Girijesh Kumar, Authorized Representative for the Department

**CORAM:**

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

**FINAL ORDER NO's. 51871-51873/2025**

**DATE OF HEARING : 18.07.2025**  
**DATE OF DECISION: 12.12.2025**

**P.V. SUBBA RAO**

The Order dated 31.01.2012<sup>1</sup> passed by the Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi<sup>2</sup> is assailed in these three appeals by:

- (a) M/s. Kool International on which a penalty of Rs. 10,00,000/- was imposed under section 112(b) of the Customs Act, 1962<sup>3</sup>;
- (b) Shri Vikas Bothra, proprietor of Kool International on whom a penalty of Rs. 10,00,000/- was imposed under section 112(b) of the Act; and
- (c) Shri Surendra Kumar on whom a penalty of Rs. 10,00,000/- was imposed under section 112(b) of the Act;

2. The impugned order confiscated goods and imposed penalties but the appeal memoranda makes it explicit that the appellants are contesting only the penalties imposed on them. Of the confiscated goods, goods worth Rs. 10,27,680/- which were imported in the name of Kool International were

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**1. impugned order**  
**2. Commissioner**  
**3. the Act**

confiscated and an option was given to Kool International to redeem them on paying a fine of Rs. 4,00,000/-.

3. In addition, goods worth Rs. 1,12,37,600/- imported in the name of DSA Imports & Exports and goods worth Rs.1,00,75,100/- imported in the name of Prakriti Collection were absolutely confiscated since it was found during investigation that these firms did not exist at all. The impugned order does not indicate that any representation was made on behalf of either of these firms. There is also no appeal by either of these firms before us. The Commissioner also did not impose any penalty on these two firms as they did not exist.

4. The operative part of the impugned order is reproduced below:

- (i) the seized goods mentioned in Annexure – A1 to this order collectively valued at Rs. 10,27,680/- (market value) having assessable value of Rs. 4,11,072/- (being 40% of market value) involving total duty of Rs. 1,10,371/- as found in the two containers and imported under two Bills of Lading No. APLU 052646094 and APLU 052646331 pertaining to M/s Kool International. These goods have been used for concealing mis-declared goods of different Bill of Lading of different importer and hence are confiscated under Section 111 (i), (l) & (m) read with section 119 of the Customs Act, 1962. However, M/s Kool International are given an option to redeem the same on payment of Redemption Fine of Rs. 4,00,000/- (Rupees four lac only) besides payment of applicable duties. The goods have to be redeemed within a period of 30 days from the date of this order;
- (ii) the seized goods mentioned in Annexure – A1 to this order collectively valued at Rs. 1,00,75,100/- (market value) having assessable value of Rs.

40,30,040/- (being 40% of market value) involving duty of Rs. 49,11,424/- found in the container No. APHU 6669350 and imported under Bill of Lading No. APLU 052800261 pertaining to M/s Prakriti Collection, Plot No. 20, Block A, Raghu Nagar, New Delhi are confiscated under section 111 (d), (i) (l) & (m) of the Customs Act, 1962. Since M/s Prakriti Collection is a non-existent firm, the confiscation is made absolute;

- (iii) the seized goods mentioned in Annexure – A1 to this order collectively valued at Rs. 1,12,37,600/- (market value) having assessable value of Rs. 44,95,040/- (being 40% of market value) involving duty of Rs. 47,85,715/- as found in the container No. CRXU 9901651 and imported under Bill of Lading No. APLU 052800182 dated 25.08.2009 pertaining to M/s DSA Import & Export, 33, H-Block, Gali No. 7, Raghu Nagar New Delhi – 59 are confiscated under section 111 (d), (i) (l) & (m) of the Customs Act, 1962. Since M/s DSA Import & Export is a non-existent firm, the confiscation is made absolute;
- (iv) Penalty of Rs. 10,00,000/- (Rupees ten lacs only) is imposed on M/s Kool International under section 112 (b) of the Customs Act, 1962 for their acts & omission and commission and abetting smuggling of goods wilful suppression of facts rendering the seized goods liable to confiscation under section 111 (i), (l) & (m) of the Customs Act, 1962 ;
- (v) penalty of Rs. 10,00,000/- (Rupees ten lacs only) is imposed on Shri Vikash Bothra, Proprietor of M/s Kool International under section 112 (b) of the Customs Act, 1962 for his acts of omission & commission and abetting smuggling of the goods & wilful suppression of facts rendering the seized goods liable to confiscation under section 111 (d), (i) (l) & (m) of the Customs Act, 1962 and for evasion of duty of Rs. 1,10,371/- as per details given in Annexure A1 to this order ;
- (vi) penalty of Rs. 10,00,000/- (Rupees ten lacs only) is imposed on Shri Surender Kumar, r/o Flat No. 32, Popular Apartment, Sector 13, Rohini, New Delhi under section 112 (b) of the Customs Act, 1962 for his acts of omission & commission in importing goods by using IEC number of different importer and abetting smuggling of the goods & wilful suppression of facts rendering the seized goods liable to confiscation under section 111 (d), (i) (l) & (m) of the Customs Act, 1962 ;

(vii) even though penalty is imposable on M/s DSA Imports & Exports, No. 33, H-Block, Gali No. 7, Raghu Nagar, New Delhi – 59 under section 112 (b) of the Customs Act, 1962 for their acts of omission & commission and abetting smuggling of goods & wilful suppression of facts rendering the seized goods liable to confiscation under section 111 (d), (i) (l) & (m) of the Customs Act, 1962 and for evasion of duty of Rs. 47,85,715/- as per details in Annexure A1 to this order, the same is not imposed now as the firm appears to be a non-existent firm and the concerned persons are not traceable. I direct the S.I.I.B., ICD, TKD, New Delhi to locate the persons for imposition of penalty on them as per law ;

(viii) even though penalty is imposable on M/s Prakriti Collection, Plot No. 20, A Block, Raghu Nagar, New Delhi under section 112 (b) of the Customs Act, 1962 for their acts of omission & commission and abetting smuggling of goods & wilful suppression of facts rendering the seized goods liable to confiscation under section 111 (d), (i) (l) & (m) of the Customs Act, 1962 and for evasion of duty of Rs. 49,11,424/- as per details in Annexure A1 to this order, the same is not imposed now as the firm appears to be a non-existent firm and concerned persons are not traceable. I direct the S.I.I.B., ICD, TKD, New Delhi to locate the persons for imposition of penalty on them as per law ;

5. The facts which led to the issue of the impugned order are that Shri Vikas Bothra of Kool International holds Importer Exporter Code<sup>4</sup> 0505058961. He received a message from Shipping Line APL that some goods were received at the ICD and asking him to clear them. Since he had not ordered any goods at all, he sent a letter dated 16.9.2009 to the Additional Commissioner of Customs stating that he never imported the goods said to have been imported and they did not belong to him and as such, he was not responsible for any claims whatsoever.

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**4. IEC**

6. Later, he sent another letter 12.10.2009 to the Additional Commissioner asking him to NOT take cognizance of his earlier letter because he had entered into an agreement with Shri Surendra Kumar to allow Surendra Kumar to import goods using his (Bothra's) IEC. It was stated that the two consignments had been imported by Surendra Kumar without his knowledge. He also said that Surendra Kumar agreed to pay all types of government liabilities and penalties, if any.

7. At this stage, it must be pointed out that nobody can import or export any goods without an IEC issued by the DGFT. Section 7 of the Foreign Trade (Development & Regulation) Act, 1992<sup>5</sup> reads as follows:

**Section 7: Importer-exporter Code Number.**

**No person shall make any import or export except under an Importer-exporter Code Number granted by the Director General** or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General:

Provided that in case of import or export of services or technology, the Importer-exporter Code Number shall be necessary only when the service or technology provider is taking benefits under the foreign trade policy or is dealing with specified services or specified technologies.

8. There is no provision either the FTDR Act or any other law to transfer, lend, lease one's IEC to anyone else or to allow one person to import goods using the IEC of somebody else.

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**5. FTDR Act**

This provision is well-known to anyone dealing with imports and exports.

9. The matter was investigated further and both Shri Vikas Bothra, the proprietor of Kool International who allowed his IEC to be used by Shri Surendra Kumar and Shri Surendra Kumar who had used the IEC of Kool International confirmed this arrangement between them.

10. Investigation revealed that in the same two containers in which the goods were imported in the name of Kool International, there were other goods imported in the names of two other firms DSA Import & Export in whose name footwear were imported and Prakriti Collection in whose name cotton towels were declared to have been imported. On examination, the goods were found to be completely different in these two consignments. Investigations showed that neither of these firms actually existed.

11. After recording statements of various persons and completing the investigation show cause notice dated 4.4.2011<sup>6</sup> was issued to Shri Vikas Bothra, Proprietor of Kool International, Shri Surendra Kumar and to M/s. DSA Import & Export and M/s. Prakriti Collection. The proposals in this SCN were decided in the impugned order.

**Submissions on behalf of Kool International and Shri Vikas Bothra**

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**6. SCN**

12. Shri Amar Kumar Sinha, Learned counsel for Kool International and Shri Vikas Bothra made the following submissions:

- (i) Shri Vikash Bothra had no personal knowledge nor any personal involvement or gain out of the alleged offence. He had not filed any Bill of Entry and therefore, the goods cannot be confiscated under section 111(d) (i) (l) and (m) of the Act. Reliance is placed on **Commissioner of Customs & Excise, Goa versus Kabul Textiles (LLC)**<sup>7</sup>.
- (ii) The allegation of violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 is not correct because the rights owners did not participate. [This appears to refer to the branded goods found in the two consignments imported in the name of DSR Import and Exports and Prakriti Collections].
- (iii) Penalty has been imposed on Kool International on the ground that acts and omissions on its part rendered the goods liable to confiscation and penalty imposed on Shri Vikas Bothra alleged that his acts and omissions had rendered the goods liable to confiscation which shows non application of mind by the Commissioner.
- (iv) In case of Less Container Load (LCL) cargo, the same container can have consignments of different parties. The aggregator books consignments of several persons and stuffs them into a single container and exports the container through the shipping line. In such a case, one importer cannot be held responsible for any discrepancy found in the consignment of another importer.

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7. 2006 (206) ELT 1173 (Bom.)

- (v) The Commissioner also held that penalty is imposable on DSR Import and Export and Prakriti Collection although he did not impose it. This shows that the Commissioner found those two firms responsible for the discrepancies in their imports. Penalty cannot be imposed on the appellant also who is a different entity and who has nothing to do with the imports in the names of the other two firms.
- (vi) Simultaneous penalty on both Shri Bothra and his proprietorship firm Kool International is not sustainable.
- (vii) The statements recorded under section 108 of the Act were not put through the procedure under section 138B of the Act and hence they should not have been relied upon.
- (viii) No role was played by Shri Vikas Bothra in the imports.
- (ix) Since no Bill of Entry has been filed, no penalty is imposable under section 112.

### **Submissions on behalf of Shri Surendra Kumar**

13. Shri Abhas Mishra, learned counsel for Shri Surendra Kumar made the following submissions:

- (i) No effort was made to investigate the true importers M/s. DSA Import & Exports and M/s. Prakriti Collections or their owners.
- (ii) Statements of Shri Bothra were vague and were not put through the procedure under section 138B of the Act and therefore, cannot be used as evidence.
- (iii) There has been a violation of the principles of natural justice.
- (iv) It is for the department to prove the guilty of the appellant and not the other way round.
- (v) The penalty imposed on Shri Surendra Kumar is disproportionate to the value of the goods confiscated which belonged to M/s. Kool International.

### **Submissions on behalf of Revenue**

14. Shri Girijesh Kumar, learned authorised representative for the Revenue vehemently supported the impugned order made the following submissions.

- (i) The goods were deliberately concealed and mis-declared in different Bills of Lading including in the name of two non-existent firms.
- (ii) M/s. DSA Import & Export and M/s. Prakriti Collection were found to be completely fraudulent, non-existent, with fake PAN and false addresses.
- (iii) The statements of Shri Bothra and Shri Surender Kumar indicated a pattern of deception and collusion.
- (iv) There was mis-declaration as well as violation of IPR laws.
- (v) The department does not have to establish its case with mathematical precision.
- (vi) The penalties imposed on the appellants are fair and proper and call for no interference.

### Findings

15. We have considered the submissions advanced by the learned counsels and the learned authorised representative for the Revenue and perused the records. The appeals assail the penalty of Rs. 10,00,000/- each imposed on M/s. Kool International, Shri Bothra and Shri Surendra Kumar under section 112.

16. These penalties were imposed by the Commissioner in the impugned order for acts of omissions which rendered the following goods liable to confiscation:

S.No.	Container no. / Bill of Lading no.	Importer	Market value (Rs.)	Confiscated under sections
1	APLU 052646094 APLU 052646331	Kool International	10,27,680	111(i), (l) & (m)
2	APLU 052800261	Prakriti Creations	1,00,75,100	111(d), (i), (l) & (m)
3	APLU 052800182	DSA Import & Export	1,12,37,600	111(d), (i), (l) & (m)

17. So far as the goods at S. No. 2 & 3 are concerned, the appellants never claimed that the consignments belonged to them. There is also no evidence that although the goods were imported in the name of Prakriti Creations and DSA Import & Export, they actually belonged to the appellants. Both Prakriti and DSA were found to be non-existent. Nobody joined the investigation nor made any representations before the Commissioner or filed any appeals on their behalf. The Commissioner, however, imposed penalties on the appellant considering these two consignments for the reason that they were found in the same container. Such decision of the Commissioner cannot be sustained. When goods are imported, one may import a full container load (FCL) or less than full container load (LCL). In case of LCL cargo, goods belonging to two or more importers is stuffed in the same container. Such a container is akin to a shared taxi or a bus. If one is in a shared taxi or a bus, he will be responsible for what he is carrying on his person or in his luggage but will NOT be responsible if a fellow passenger carries contraband on his person or in his luggage. Likewise, if there are violations in the consignment of some other importer was also stuffed in the same container, the appellants cannot be held responsible or penalised under section 112 for acts or omissions related to such consignments.

18. Insofar as the consignment at S. No. 1 is concerned, it was confiscated under sections 111 (i), (l) and (m) read with section 119 of the Act. These sections read as follows:

**Section 111. Confiscation of improperly imported goods, etc. -**

The following goods brought from a place outside India shall be liable to confiscation: -

(a) \*\*\*\*\*

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

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(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77 ;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54 ;

**Section 119. Confiscation of goods used for concealing smuggled goods. -**

Any goods used for concealing smuggled goods shall also be liable to confiscation.

**Explanation :** In this section, "goods" does not include a conveyance used as a means of transport.

19. Sections 111(l) and (m) apply to goods which do not correspond to the entry made under the Act. The 'entry is made' under the Act by filing a Bill of Entry. In this case, no Bill of Entry was filed at all. It is said that no Bill of Entry was filed for the reason that the IEC of Kool International was suspended by the DGFT; therefore, the question of not matching with the entry made does not arise.

20. Section 111(i) renders 'any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof' liable to confiscation. This clause is not related to filing of any Bill of Entry. Goods were imported under two Bills of Lading in the name of Kool International. In Bill of Lading No. APLU 52646331, the goods declared were cotton towels and on examination, small cotton towels were found. Evidently, small cotton towels also fall under the description cotton towels. There is no discrepancy in this Bill of Lading. In Bill of Lading APLU 052646094, the goods were described as Footwear and they were found to be Baby shoes (unbranded) and baby shoes (branded). It cannot be anyone's case that baby shoes are not footwear.

21. Undisputedly, the position of Mr. Bothra from the letters which he had sent to the Additional Commissioner up to the submissions before us, is that although the goods were imported in the name of Kool International, they actually belonged to Shri Surendra Kumar and that he had lent his IEC to Shri Surendra Kumar for the purpose. Section 7 of the FTDR Act prohibits any imports without an IEC. 'Any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force' are liable to confiscation under section 111(d) of the Act.

However, the Commissioner did not confiscate these goods under section 111(d) of the Act although he did so with respect to the other consignments belonging to DSA Import & Export and Prakriti Collections.

22. The Commissioner also invoked section 119 which provides for confiscation of the goods used to conceal other goods. In this case, the goods imported in the name of Kool International were separate and distinct and they were not used to conceal any other goods. Therefore, section 119 will not apply.

23. Consequently, confiscation of the goods imported in the name of M/s. Kool International cannot be sustained. Consequently, the penalties imposed on the appellant cannot be sustained.

24. The impugned order is set aside insofar as it confiscates the goods imported in the name of Kool International and imposes penalties on M/s. Kool International, Shri Bothra and Shri Surendra Kumar. All three appeals are accordingly, allowed.

(Order pronounced in open court on 12/12/2025.)

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

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