

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 55763 OF 2023

[Arising out of Order-in-original No. 13/Commr./VC/Ess Kay/ICD-PPG/2023-24 dated 18.08.2023 passed by the Commissioner of Customs, (ICD PPG & Other ICDs)]

M/s Venus Global Logistics **Appellant**
276, Rajouri Garden,
New Delhi-110064

Versus

Commissioner of Customs- **Respondent**
ICD Patparganj and Others ICDs
Patparganj, Delhi-110096

WITH

CUSTOMS APPEAL NO. 55764 OF 2023

[Arising out of Order-in-Original No. 13/Commr./VC/Ess Kay/ICD-PPG/2023-24 dated 18.08.2023 passed by the Commissioner of Customs, (ICD PPG & Other ICDs)]

M/s Ess Kay Fabrications, **Appellant**
Plot No. 519, Pace City-II,
Sector-37, Gurugram-122001

Versus

Commissioner of Customs, **Respondent**
ICD Patparganj and Others ICDs,
Patparganj, Delhi-110096

APPEARANCE:

Shri B.L. Garg and Shri Ansh, advocates for the appellant
Shri Shiv Shankar, authorised representative of the department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing/Decision: December 08, 2025

FINAL ORDER NOS. 51858-51859/2025

C.J. MATHEW:

The limited issue canvassed in this appeal of M/s Ess Kay Fabrications, against order¹ of Commissioner of Customs, ICD

1. [order-in-original no. 13/Commr./VC/Ess Kay/ICD-PPG/2023-24]

Patparganj, is the scope for invoking section 28(4) of the Customs Act, 1962, with appendant penalty under section 114A of the Customs Act, 1962, despite the duty liability having been discharged, along with applicable interest, immediately after clearance of impugned goods. According to the appellant, 'copper tubes', though eligible for exemption under the ASEAN-India Free Trade Agreement (AIFTA) insofar as basic customs duty was concerned, are liable to 'countervailing duty', imposed under section 9 of Customs Tariff Act, 1975 *vide* notification², and, like at all other customs stations, were cleared without payment of duty on the ICES owing to non-availability of automatic computation on 'self-assessed' bills of entry with duty liability discharged thereafter by resort to manual re-assessment after cancellation of the original bill of entry.

2. It would appear that the impugned clearance of the appellant was subjected to investigation by the Directorate of Revenue Intelligence (DRI), and on the ground that the appellant, despite being aware of liability arising from the said notification as evidenced by resort to manual assessment of their imports at other ports, had failed to assume responsibility for fastening of duty liability on the impugned goods culminating in order for recovery of differential duty besides imposition of penalty under section 114A of Customs Act, 1962 on the appellant with penalty of ₹ 2,00,000 imposed on M/s. Venus Global Logistics, the custom broker and the other appellant herein, under section 112 of Customs Act, 1962 consequent upon invoking of section 111 of Customs Act, 1962.

2. [notification no. 2/2022-Customs (CVD) dated 28th April 2022]

3. Learned Counsel for appellant submitted that failure to discharge duty liability before clearance was prompted only by the lack of facility in the ICES simultaneously with issue of said notification and that compliance was being effected at all ports across the country by the temporary and stop-gap arrangement informed **supra**.

4. It was submitted that just as the duty liability was being discharged at other ports, that on the impugned goods was also made good within a few days thereof along with appropriate interest, without initiating re-assessment before clearance on the apprehension that delay would inevitably lead to crippling demurrage. He contended that the practice adopted had not been interfered with anywhere and that re-assessment had been sought even though investigations had since commenced. Nonetheless, he contended that discharge of duty liability on 25th May, 2022, a mere seven days after 'out of charge', was neither deviation nor unique.

5. Learned Authorised Representative submitted that the facts had been appropriately appreciated in the show cause notice as well as in the impugned order and that it was the responsibility of the appellants under the 'self-assessment' mode to ensure discharge of duty liability prescribed by law before presenting goods for 'out of charge' in accordance with section 47 of Customs Act, 1962.

6. We find that the adjudicating authority has invoked section 28(4) of Customs Act, 1962, predicated upon one or more of collusion, wilful mis-statement or suppression of facts, which, while not distinguishable from the normal provision on fastening of duty liability in the present instance, precludes 'deemed conclusion'

attending on discharge of liability and mandates imposition of like penalty under section 114A of Customs Act, 1962. The enhanced burden renders it essential for the facts relied upon to establish the ingredients empowering the invoking. The elapse of time between clearance of goods and payment of days may, in the present instance, have exceeded that at other ports by a few days at most, which does not lend itself to establishing wilful mis-statement or suppression of facts in the absence of any other evidence or, of itself, as non-payment of duty.

7. On the facts, we see no particular gain accruing to the importer by postponement of duty liability inasmuch as delayed payment entailed interest and that there is no evidence of the investigation having established the appellant as responsible for delay in payment of duty let alone actuated by any of the ingredients in section 28(4) of Customs Act, 1962. The consequence of exclusion from 'deemed conclusion' of proceedings and mandatory penalty are too harsh to be tenable in the absence of justification for resort to section 28(4) of Customs Act, 1962.

8. Prior knowledge with the importer and custom broker about duty liability is not in doubt. It is also not in doubt that, just as at the other places, duty liability was discharged within a few days of 'out of charge' and clearance. It is again an undisputed fact that, even after issue of the notification imposing the duty, it took the customs administration substantial time to make necessary changes for the new duty liability to be captured on assessment on ICES. In these circumstances, resort to section 28(4) of Customs Act, 1962 without particular evidence of wilful mis-statement or suppression of fact is

not tenable let alone proportionate. Considering the conspectus, we find no reason to allow the penalties and confiscation to subsist. Accordingly, the impugned order is set aside to allow the appeals.

(Order dictated in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.J. MATHEW)
MEMBER (TECHNICAL)

Kritika