

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH-COURT NO. 1**

**CUSTOMS APPEAL NO. 50462 OF 2023**

[Arising out of Order-in-Appeal No. CCA/CUSTOMS/ D-II/IMP/ICD/TKD/1026/2022 dated 21.10.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

**M/S GFC WELD HOUSE**

**.....APPELLANT**

6066-5, 1<sup>st</sup> Floor, Bari Market,  
Sadar Bazar, Delhi-110006

Vs.

**PRINCIPAL COMMISSIONER, CUSTOMS-  
NEW DELHI(ICD TKD)-110020**

**.....RESPONDENT**

**Appearance:**

Shri B.L. Garg, Advocate for the Appellant

Shri M.K. Shukla, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P.V.SUBBA RAO, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 51879 /2025**

**DATE OF HEARING : 30/09/2025**

**DATE OF DECISION: 17/12/2025**

**P.V.SUBBA RAO**

1. M/s GFC Weld House, Delhi<sup>1</sup> filed this appeal to assail the order in appeal dated 21.10.2022 passed by the Commissioner of Customs (Appeals)<sup>2</sup>, New Customs House, New Delhi in which he upheld the order in original dated 07.10.2019 passed by the Joint Commissioner and dismissed the appellant's appeal. The Joint Commissioner had passed the order against five noticees including the appellant herein. In so far as the appellant is

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**1 Appellant**

**2 Impugned order**

concerned, he confirmed the demand of Rs. 1,93,573/- under section 28(4) of the Customs Act, 1962<sup>3</sup> along with interest under section 28AA of the Act and imposed an equal amount of penalty under section 114A of the Act. He further imposed a penalty of Rs. 10,00,000/- under section 114AA of the Act.

2. We have heard learned counsel for the appellant and learned authorized representative appearing for the department and perused the records.

3. The issue in this case falls in a narrow compass. The appellant imported goods and cleared them under Bill of Entry No. 9889269 dated 18.04.2013 using the Focus Market Scheme<sup>4</sup> Scrip. This scrip No. 0510332222 dated 22.08.2012 was issued by DGFT in the name of M/s Albatross Gems Pvt Ltd. for Rs. 56,091/-. It was fraudulently manipulated to Rs. 25,67,974/- and was registered in the Customs EDI system at Inland Container Depot, Tughlakabad, New Delhi. Thus, the value of the scrip was fraudulently enhanced 50 times. This scrip was then used by three different importers including the appellant. The appellant had utilized the scrip to pay customs duty of Rs. 1,93,573/- which itself was more than thrice the original value of the scrip. After investigation, a show cause notice was issued to demand duty with interest and impose penalties on different persons including the appellant herein.

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**3 Act**

4. It must be pointed out that this *Modus Operandi* of fraud was going on at various places. The case of the appellant before us is that it had purchased the scrip for a consideration under *bonafide* belief and, therefore, it was not liable to pay the customs duty and was also not liable to penalty. The question which falls for consideration is where the scrip has been fraudulently manipulated and entered in the Customs EDI system and an importer uses such scrip to pay customs duty even though such importer itself may not have manipulated the scrip or made the fraudulent entry in the EDI system whether the importer is liable to pay duty and penalty. This question was answered in favour of the Revenue and against the importer by the Supreme Court in **Munjil Showa Ltd. vs. Commissioner of Customs & Central Excise (Delhi-IV)**<sup>5</sup>:

“8. From the judgment and order passed by the Tribunal and even from the findings recorded by the Department, it has been found that the DEPB licenses/Scripps, on which the exemption benefit was availed of by the appellant(s) (as buyers of the forged/ fake DEPB licenses/Scripps) were found to be forged one and it was found that the DEPB licenses/Scripps were not issued at all. A fraud was played and the exemption benefit was availed on such forged/fake DEPB licenses/Scripps.

9. In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scripps are void *ab initio*, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the Department was absolutely justified in invoking the extended period of limitation.

10. It is also required to be noted that the moment, the appellant(s) was/were informed about the fake DEPB licenses, immediately they paid the Customs Duty, may be under protest. The Customs Duty was paid under protest to

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5      2022 (9) TMI 1076 –Supreme Court

avoid any further coercive action. Be that as it may, the fact remains that the DEPB licenses/Scripps on which the exemption was availed by the appellant(s) was/were found to be forged one and, therefore, there shall be a duty liability and the same has been rightly confirmed by the Department, which has been rightly confirmed by the Tribunal as well as the High Court.”

5. This decision was also followed by this Tribunal in **Nidhi Enterprises** and **Shri Sudarshan Kumar Jain** vs. **Commissioner of Customs (Export), New Delhi**<sup>6</sup> and **Shri Gurmeet Singh Kohli** vs. **Commissioner of Customs (Export) New Delhi**<sup>7</sup> and other cases. In these cases, the decision was that the importer was liable to pay the customs duty with interest and was liable to penalty. During the course of hearing, learned counsel for the appellant submitted that he was not pressing the demand of duty and penalty under section 114A as these issues have been decided by the Supreme Court in the case of **Munjal Showa**. However, he said that he was pressing the question of penalty of Rs. 10,00,000/- imposed on the appellant under section 114AA.

6. Section 114AA reads as follows:

**“114AA. Penalty for use of false and incorrect material.—**

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”

7. What is evident is penalty under section 114AA can be imposed only if a person knowingly or intentionally makes signs

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**6** 2022 (11) TMI 869-CESTAT, NEW DELHI

**7** 2023 (4) TMI 453-CESTAT, NEW DELHI

or uses or cases to be made signed or uses any declares statement or document which is false or incorrect. In this case, we do not find from the records that the appellant had the knowledge that the scrip was manipulated. The appellant was clearly not the one who fraudulently manipulated the scrip. We, therefore, find that penalty imposed under section 114AA cannot be sustained.

8. In view of the above, we partly allow the appeal by setting aside the penalty under section 114AA on the appellant and uphold the rest of the impugned order.

[Order pronounced on **17/12/2025**]

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

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

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