CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. III

CUSTOMS APPEAL NO. 50401 OF 2019

[Arising out of Order-in-Original No.DLI/CUS-PREV/OPD/PR.COMMR/05/2018 dated 07.06.2018 passed by the Prinicipal Commissioner of Customs(Customs Preventive), New Customs House, New Delhi]

SHRI AJIT SINGH **....APPELLANT**
F-159/1, Rajouri Garden, New Delhi-110 027

VERSUS

COMMISSIONER OF CUSTOMS (AIRPORT AND GENERAL) **...RESPONDENT**
New Customs House, Near IGI Airport, New Delhi

APPEARANCE:
Shri Akashdeep Advocate for the appellant
Shri Srimali Sadashiv, Authorised Representative for the respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.50875/2026

Date of Hearing: 05.05.2026
Date of Decision: 13.05.2026

K. ANPAZHAKAN:

1. Shri Ajit Singh (herein after referred as the appellant) has filed this appeal against the penalty imposed on him in the common Order-in-Original No.DLI/CUS-PREV/OPD/PR.COMMR/05/2018 dated 07.06.2018 passed by the Prinicipal Commissioner of Customs(Customs Preventive), New Customs House, New Delhi.

2. The facts of the case are that M/s M.C. Overseas (IEC-0511047649), 309, Building No.2885/3, Beadonpura, Gali No.17, Karol Bagh, New Delhi,

are the importers engaged in importing Air Conditioners falling under Chapter Heading 84151090 through ICD, Ballabhgarh. The Department has initiated an investigation against the importer alleging that the importer M/s M.C. Overseas had under-invoiced the goods namely Air Conditioners, by mis-declaring the Maximum Retail Price (MRP) on the subject goods. Accordingly, statements of several persons were recorded. On completion of investigation, a common show cause notice No. C.No.VIII(SB)10/Cus.prev./Alpha/20/12 dated 14.03.2013 was issued to different noticees including the appellant. The said notice was adjudicated by the Commissioner of Customs Preventive, New Delhi vide Order-in-Original No. 10/KAM/Commr/2013 dated 31.12.2013 confirming the demand of Customs Duty and imposing penalties on various persons, including the appellant. On appeal, the Tribunal vide its Final Order No. C/A/58374-58377/2017-CU(DB) dated 15.12.2017, remanded the matter to the adjudicating authority for fresh adjudication. Subsequently, the Principal Commissioner of Customs Preventive, New Delhi vide common Order-in-Original No. DLI/CUS-PREV/OPD/PR.COMMR/05/2018 dated 07.06.2018 (impugned order), decided the issue wherein he has interalia, imposed penalty of Rs. 20 lakhs on the appellant, Shri Ajit Singh under Section 112(a) of the Customs Act. Against the imposition of the penalty, the appellant filed the present appeal.

3. The appellant submits that he was made a co-noticee in the show cause notice dated 14.04.2013 along with the importer **M/s MC overseas** and its proprietor Mr. Manu Chopra and Mr. Rohit Sakhuja. The appellant submits that both M/s M.C. Overseas and Mr. Rohit Sakhuja preferred appeals against the Order-in-Original-II and the said appeals were already decided vide order dated 23.12.2019 whereby the Hon’ble Tribunal has set

aside the penalties imposed on both the appellants. As he has been implicated in this case on the same set of facts, the appellant submits that the said decision of dropping penalties against them is equally applicable to him also. Accordingly, he submits that the penalty imposed on his is liable to be set aside.

4. The appellant further submits that in the instant case, all consignments were examined by the Department before clearance. The value declared by the importer had already been determined and assessed by the proper officer at the time of import and the officer was satisfied with the value declared in the Bills of Entry which was accompanied by documents like invoice, packing list etc. There is no evidence of mis-declaration or suppression on the part of the appellant so as to invoke the extended period of limitation. Thus, the appellant submits that the demand confirmed by invoking the extended period of limitation is not sustainable. In support of this contention, the appellant relies upon the judgement of the Hon'ble Supreme Court in the case of **Uniworth Textiles versus CCE Raigad, 2013(288)ELT 161.**

5. The appellant further submits that the show cause notice has been issued by invoking the provision of Section 28 (4) of the Custom Act. The Revenue has not adduced any material or evidence to show that the importer firm had colluded with the foreign supplier to show lesser value of the goods. There is no material evidence brought on record to show that the importer had paid any amount in addition to the price declared in the invoice to the foreign suppliers. Thus, in the absence of any material to show collusion between the importer firm and the foreign suppliers, the Revenue cannot claim that the importer firm had declared lesser value of

the impugned goods imported under Bills of Entry with intent to evade duty. In support of the above contention, reliance is placed upon the decision in **Taito Watch Manufacturing Industries versus Commissioner of Customs, Jaipur.**

5.1. The appellant submits that the declared value under Section 14 of the Act has been rejected solely on the basis of alleged higher declared value by M/s EGPL, which is erroneous and impermissible under law. The appellant submits that rejection of transaction value under Section 14 of the Customs Act can only be made when there is cogent material or evidence to suggest that the imports have been under-valued, which is not there in this case. It is a well-settled law that in case, the valuation under Rule 3 is to be rejected, then the value has to be arrived at by following the Valuation Rules in saratim, ie, going serial number wise from Rule 4 onwards, as held by the Hon'ble Supreme Court in the case of **Eicher Tractors Pvt. Ltd. vs Commissioner of Customs, Mumbai.** Rule 4 prescribes that in case the transaction value is rejected, the value can be arrived at by taking into account imports of identical goods during the relevant period. It is submitted that on perusal of NIDB data, various models of air-conditioners were imported during the relevant period and were cleared at a price lower than the price declared by the importer herein. It is further submitted that Rule 4(3) of the Valuation Rules states that in case, more than one transaction value of identical goods is available, then the lowest of such value shall be taken for the purpose of determining the value of imported goods. In the present case, the Ld. Adjudicating authority has not followed this method to re-determine the assessable value. Accordingly, he submits that the allegation of under valuation in this case is not established.

6. Regarding the penalty imposed on him under, section 112(a) of the Customs Act, 1962, the appellant submits that no penalty is imposable upon him as he is not the importer. The role attributed to the appellant relates only to 'sale of goods post importation and clearance for home consumption'. Thus, the appellant submits that penalty imposed upon him under Section 112(a) is not sustainable.

7. The Ld. Authorised Representative for the Department reiterated the findings of the impugned order and supported the penalty imposed. It is his submission that the department has ascertained the MRP/RSP for the said model of air conditioners of O'General brand imported by the importer and found that the value has been declared less at the time of import and the same were sold at higher MRP in the market. Thus, he submitted that the less declaration of MRP of the subject goods at the time of import is done with an intention to evade leviable counter veiling duty. Further, the seized air conditioners were given to the appellant for safe custody and the same were not kept safely by the appellant. For this act of embezzlement, a FIR 225/2012 was lodged in Nihal Vihar, Police station under Section 406 of IPC. Thus, the Ld. A.R. supported the penalty imposed on the appellant.

8. Heard both sides and perused the documents.

9. We find that the importer M/s M C Overseas has imported Air Conditioners through ICD Ballabhgarh. The allegation against the importer is that there was a mis-declaration resulting in suppression of value of goods at the time of import, with a view to evade payment of customs duty. We find that the show cause notice was issued to the importer M/s

M.C. Overseas and its proprietor and the demand has been confirmed in the impugned order. Penalties were also imposed on the importer as well as the appellant on the same allegation. We find that the importer M/s M.C. Overseas and Mr. Rohit Sakhuja preferred appeals against the Order-in-Original-II(impugned order) and the said appeals were already decided vide order dated 23.12.2019 whereby the Tribunal has set aside the penalties imposed on both the appellants. We find that the appellant herein has also been implicated as a co-noticee in this case on the same set of facts. Thus, we find merit in the submission of the appellant that the ratio of the said decision of dropping penalties against them is equally applicable to the appellant also. Accordingly, we observe that the penalty imposed on the appellant is liable to be set aside on this count itself.

10. Regarding the role of the appellant in this case, we find that the appellant is not the importer and his role was only related to sale of goods after clearance for home consumption. We also find that there is no evidence brought on record to show that the appellant was involved in undervaluation of the goods. We find that the allegation of undervaluation has been made on the basis of valuation adopted by another importer M/s EGPL. In this regard, we find that the difference between the prices of EGPL and the importer firm was due to the SAARC Agreement, the basic duty of EPA goods is Nil. Further, EPA being a foreign company profit is taken back to the country. Thus, we agree with the submission of the appellant that the price adopted by the appellant cannot be compared with the price of goods imported by M/s EGPL. We find that other than the price of EGPL, there is no evidence available on record to show that the importer was involved in undervaluation of goods in any manner. Thus, we hold that the allegation of under-valuation against the importer and the

appellant herein are not sustained. Hence, we hold that no penalty imposable on the appellant under section 112(a) of the Customs Act, 1962.

11. We find that there is another allegation against the appellant that the seized air conditioners were given to the appellant for safe custody and the same were not kept safely by the appellant. We find that for this act of embezzlement, a FIR 225/2012 was lodged in Nihal Vihar, Police station under Section 406 of IPC. Thus, we find that separate action has already been initiated for that violation. Further penalty under section 112(a) of the Customs Act can be imposed for violation of any of the provisions of the Customs Act. In the present case, we find that the allegation of under valuation against the appellant under the Customs Act is not sustained. Accordingly, we hold that the penalty under section 112(a) of the Customs Act, 1962 is not sustainable and hence we set aside the same.

12. In the result, the appeal filed by the appellant is allowed with consequential relief, if any, as per law.

[Order Pronounced on 13.05.2026]

(ASHOK JINDAL)
MEMBER (JUDICIAL)

K. ANPAZHAKAN
MEMBER (TECHNICAL)

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