CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 55333 OF 2023

(Arising out of Order-in-Original No. 14/2023/VCG/Pr. Commr./ICD-Import/TKD dated 28.06.2023 passed by the Principal Commissioner of Customs, New Delhi)

Three Aces Global Logistics Pvt. Ltd. **.....Appellant**
C-16, Sector-8,
Noida, U.P.

Versus

Principal Commissioner of Customs, **.....Respondent**
ICD (Import), Tughlakabad, New Delhi

APPEARANCE:

Shri T. Chakrapani, Consultant and Shri S. Shashank and Shri Shiva, Advocates for the Appellant

Shri M.K. Shukla, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING: 28.01.2026
DATE OF DECISION: 18.05.2026

FINAL ORDER NO. 50913/2026

JUSTICE DILIP GUPTA:

Three Aces Global Logistics Pvt. Ltd[1], a Customs House Agent, is aggrieved by that portion of the order dated 28.06.2023 passed by the Principal Commissioner of Customs ICD (Import), Tughlakabad[2] that imposes a penalty upon it under section 112(a) (ii) of the Customs Act, 1962[3].

2. It transpires from the record that the appellant had filed a Bill of Entry on behalf of M/s Vanesa Cosmetics Pvt. Ltd for imports of "Actuator,

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1 the appellant
2 the Principal Commissioner
3 the Customs Act

Valve, Pocket spray Bottle" meant for scent spray and similar toilet sprays during the period from 2017-2020 for imports at ICD TKD, New Delhi and Air Cargo, New Delhi. The Directorate of Revenue Intelligence conducted an investigation on the misclassification of the imported goods and a show cause notice dated 07.07.2022 was issued to M/s Vanesa Cosmetics Pvt Ltd as also to the appellant. The appellant filed a detailed reply to the show cause notice and contested the allegations made. However, the Principal Commissioner, by the order dated 28.06.2023, not only confirmed the demand of differential customs duty from the importer as the goods were misclassified, but also imposed penalty upon the appellant under section 112(a)(ii) of the Customs Act.

3. Penalty has been imposed upon the appellant for the reason that the short payment demand has been determined on account of suppression of facts or willful statement.

4. Shri T. Chakrapani, learned consultant for the appellant submitted that the classification dispute is a matter of opinion and penalty cannot be imposed for this reason. Learned consultant pointed out that the past Bills of Entries were physically examined and given out of charge based on the classification declared by the importer. Learned consultant also pointed out that the appellant had acted on the declaration, information and documents provided by the importer and there is no evidence on record to suggest that the appellant had connived with the imported for alleged improper import.

5. Shri M.K. Shukla, learned authorized representative appearing for the department, however, supported the impugned order.

6. Penalty under section 112 (a) (ii) is imposed if goods are liable to confiscation under section 111 of the Customs Act.

7. The view taken by the Principal Commissioner that the goods were liable to confiscation under section 111(m) of the Customs Act cannot be sustained merely for the reason that there was some misclassification by the importer or the Customs Broker. This is what was held by a Division Bench of this Tribunal in **Challenger Cargo Cargo Carriers Pvt Ltd** vs. **Principal Commissioner of Customs (Import) Inland Container Depot, Tughlakabad, New Delhi**[4] and The relevant observations are as follows:

> "**20.** Section 111(m) does not provide for confiscation of goods if the importer or on his behalf, the Customs Broker claims any wrong classification in the Bill of Entry. It only provides for confiscation if there is mis-declaration of goods. Even if the goods are mis-classified or duty is otherwise wrongly self-assessed by the importer, the goods do not become liable for confiscation."

8. As the goods could not be confiscated, the imposition of penalty upon the appellant under section 112(a) (ii) of the Customs Act cannot be sustained.

9. The impugned order so far as it imposes penalty upon the appellant is, accordingly, set aside and the appeal is allowed.

(Order pronounced on **18.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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4 Customs Appeal No. 50980 of 2021 decided on 01.12.2022