CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 50024 of 2020

(Arising out of Order-in-Original No. 06/COMMR/CUS/IND/2019-20 dated 31.07.2019 passed by the Commissioner of Customs, Indore)

Shri Abhay Gupta, **...Appellant**
S/o of Shri Vinod Kumar Gupta
R/o 11 Janki Nagar, Indore,
Madhya Pradesh- 452001

VERSUS

Commissioner of Customs, **...Respondent**
Central Excise & Service Tax
Manik Bagh Palace, Post Bag No. 10,
Indore – 452001 (Madhya Pradesh)

APPEARANCE:

None, Advocate for the appellant.

Shri Ajay Jain, Special Counsel for 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: 19.05.2026

FINAL ORDER NO. 50933/2026

JUSTICE DILIP GUPTA:

Shri Abhay Gupta[1] has filed this appeal to assail that portion of the order dated 31.07.2019 passed by the Commissioner that imposes a penalty of Rs. 10 lacs upon him under section 112(b) of the Customs Act 1962[2].

2. The appellant is the Director of M/s. Eravat Steels. It is stated that Gurmmet Singh, Director of M/s. Sarveshree Industries Ghatablillod had

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1. **the appellant**
2. **the Customs Act**

given the unit on lease to M/s. Eravat Steels and its Director as per the Memorandum of Understanding dated 24.01.2007.

3. A show cause notice dated 24.08.2012 was issued by the Directorate General of Central Excise Intelligence[3]. In respect of the appellant the show cause notice mentions:

> "**18.6 Statement of Shri Gurmmet Singh, the then Director of M/s Sarveshree Industries Ghatabillod had also been recorded by the Senior Intelligence officer, DGCEI, RU, Indore on 12.11.2010 wherein he interalia stated that he was the Director of M/s Sarva Shree Industries Ghatabillod (SIEL). Though, he was the director of the said unit but the said unit was given on lease to M/s Eravat Steels and its director was Shri Abhay Gupta as per the memorandum of understanding No. 104/7 dated 24.01.2007 and as per the terms and condition of the memorandum the unit of SIEL had been run by M/s Eravat Steels and its director Shri Abhay Gupta till the same has been taken over by Syndicate Bank vide their letter ref.** No. 472/ROV/REC/F18011VUS/2008 dated 09.06.08. The said memorandum is duly notarized before Shri Mohan Pal, Notary, MP Govt Indore. He has further stated that regarding purchase of the MS ingots by M/s SIEL that the unit as running by M/s Eravat Steel and its director Shri Abhay Gupta they can inform the same
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> **18.7 Statement of Shri Abhay Gupta the then Leasee of M/s Sarveshree Industries, Ghatabillod had been on 29.11.10. When he was specifically questioned whether** they had any interest/share /management control over M/s Sarveshree Industries Pvt. Ltd. he stated that "no they had no shares or management control over M/s Sarveshree Industries Pvt. Ltd."
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> **Though Shri Abhay Gupta in his said statement had denied to have any control or business interest with M/s Sarveshree Industries**

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3. DGCEI

> **Pvt. Ltd. but from the memorandum of understanding No. 104/7 dated 24.01.07 (signed by him for M/s Eravat Steel Pvt. Ltd.) between him and Shri Gurmeet Singh and from the statement dated 12.11.10 of Shri Gurmeet Singh, it was reflected that M/s Eravat Steel had taken the unit of M/s Sarveshree Industries Pvt. Ltd. on lease for manufacture of MS bar and they were responsible for purchase of raw materials (MS Ingots) as per the said memorandum.** It is also reflected that Shri Abhay Gupta had willfully mis-stated that they had no control in M/s Sarveshree Industries Pvt. Ltd."
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> **(emphasis supplied)**

4. The show cause notice called upon the appellant to show cause as to why penalty should not be imposed upon him under section 112(b) of the Customs Act.

5. The appellant filed a reply and denied the allegation made therein. The Commissioner, however, confirmed the demand proposed in the show cause notice for the reason that the evidence brought on record including gate passes, invoices, ledgers and cash book and a computer were seized from the room of Ganpat Singh, Machine Operator of M/s New Tech Abrasives Ltd[4] showed evasion of duty by the appellant.

6. It is seen from the order that reliance has been placed on various statements made under section 108 of the Customs Act, which statements could not have been relied upon as the procedure contemplated under section 138B of the Customs Act had not been followed. This is what was also held by the Tribunal in **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[5].

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4. NTAL
5. Excise Appeal No. 51148 of 2020 decided on 01.04.2025

7. The impugned order has placed reliance upon certain ledger entries and computer print-outs of NTAL. These are records of third-party, which neither belong to the appellant nor were maintained by him. These records, in the absence of any independent corroboration, cannot form the basis for imposition of penalty under section 112(b) of the Customs Act.

8. Penalty under section 112(b) of the Customs Act could not have been imposed upon the appellant as for imposing penalty two conditions are required to be followed namely,

> (i) Acquiring possession or being in anyway concerned or dealing with any goods that are liable for confiscation; and
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> (ii) Knowledge or belief about such goods being liable for confiscation.

9. The aforesaid two conditions are not satisfied in the present case. The appellant had not dealt with the goods that are liable to confiscation and nor is there anything to show that the appellant had knowledge or belief that such goods were liable to confiscation. The impugned order also does not provide any basis to assume that the appellant had any knowledge that the goods are liable to confiscation under section 111 of the Customs Act.

10. Thus, in the absence of knowledge or belief that such goods are liable to confiscation under section 111 of the Customs Act, penalty under section 112(b) of the Customs Act could not have been imposed upon the appellant.

11. Thus, for all the reasons stated above, the impugned order dated 31.07.2019 passed by the Commissioner in so far it concerns the

appellant deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **19.06.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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