CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 52871 of 2019

(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 Anil Awate, **...Appellant**
28, Kati Ghati, Dewas
(M.P.)

VERSUS

Commissioner of Customs, **...Respondent**
Manik Bagh Palace, Post Bag No. 10,
Indore – 452001 (M.P.)

APPEARANCE:

Shri V. V. Gautam and Shri Sumit Kumar, Advocates 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. 50931/2026

JUSTICE DILIP GUPTA:

This appeal has been filed by Shri Anil Awate [1] to challenge that portion of the order dated 31.07.2019 passed by the Commissioner that confirms the demand of duty by invoking the extended period of limitation under the proviso to section 28(1) of the Customs Act, 1962[2].

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

The order also charges interest from the appellant and penalties under sections 114 and 114AA of the Customs Act.

2. The appellant formed a proprietorship firm M/s. Shri Sai Traders. On 20.12.1988, the firm obtained permanent registration certificate from Commercial Tax Department, Circle Dewas (M.P.) for trading of all short of chemicals, laboratory equipments and scientific equipments, packing material, hardware, industrial machinery, thread and general goods.

3. During the course of business, the firm between 19.10.2007 to 19.11.2007, sold 157.035 Metric Tons of MS Scrap valued at Rs. 29,73,985/- to M/s. New Tech Abrasives Ltd., F-59, 60, 61 Indore SEZ, Phase-I, Sector No. III, Pithampur, Distt. Dhar (MP)[3] through 12 invoices. NTAL was engaged in the manufacture of M.S. Ingots and Shots/Grits. Alongwith statement of sales by SST to NTAL and 12 number of invoices issued by SST TO NTAL for aforesaid sales of MS Scraps are placed.

4. Upon the sale of scrap ibid by SST to NTAL, there was no export duty leviable under the provisions of Schedule-II of Export Tariffs of Customs Tariff Act, 1975[4] till 09.05.2008. That by Notification issued by the Central Board of Excise and Customs, the export duty was imposed upon the export of MS Scrap w.e.f. 10.05.2008. Even otherwise, the export duty was not leviable upon the aforesaid supply by SST to NTAL.

5. Based upon information that NTAL has clandestinely removed huge quantity of M.S. Ingots from their factory situated at SEZ without the permission of the Jurisdictional Customs Officers and without

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3. NTAL
4. the Tariff Act

payment of customs duty payable thereon, the officers of Directorate General of Central Excise Intelligence, Regional Unit, Indore[5], conducted search on 23.11.2009 at various premises. As a result of such searches various documents computers containing data thereof were recovered and seized under panchnamas dated 23.11.2009.

6. During the course of investigation, the Officers of DGCEI conducted scrutiny of documents and computers seized from various premises during the course of search on 23.11.2009 and recorded the statement of various persons including the appellant under section 108 of the Customs Act. The statement of the appellant was also recorded 29.06.2011 Excise Act read, wherein the appellant stated that during 19.10.2007 to 08.11.2007, his firm had supplied Scrap valued at 29,73,985/- under cover of various invoices and submitted the copies of 12 invoices.

7. A show cause notice dated 24.08.2012 was issued to many persons including the appellant with the show cause notice, copy of appendix was served but copy of none of the relied documents was served to the appellant. After receipt of show cause notice, the appellant requested the Commissioner and ADG DGCEI to provide the copies of relied upon documents, but the appellant was not provided the copies of relied upon documents.

8. The show cause mentions that the appellant appears to have sold and supplied 443.595 M.T. of M.S. Scrap valued at Rs. 1,09,45,645/- in his name or his proprietorship firm to NTAL, clandestinely without payment of customs exports duty amounting to Rs. 16,41,847 @ 15% Advl.). Thus, the appellant appears to be liable for penalty under section

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5. DGCEI

114 of the Customs Act for clandestine supply of the **M.S. Scrap** without payment of payable customs duty to NTAL situated in SEZ and as such duty should be demanded from the appellant under the proviso to section 28(1) of the Customs Act with interest and penalty under section 114 of the Customs.

9. The appellant submitted the reply to the show cause notice denied all the allegations.

10. The Commissioner, however, passed impugned ex-parte order against the appellant, without giving any opportunity of personal hearing in accordance with the provision of section 112A of the Customs Act, whereby the Commissioner was under mandatory obligation to provide opportunity of being heard (personal hearing) to the appellant.

11. Being aggrieved against the impugned ex-parte order passed by the Commissioner, the appellant filed the present appeal before this Tribunal.

12. The Commissioner, however, confirmed the demand of duty with interest and imposed penalties under sections 114 and 114AA of the Customs Act.

13. Shri V. V. Gautam, learned counsel for the appellant assisted by Shri Sumit Kumar made the following submissions:

(i) The demand of customs duty from the appellant is against the provisions of the Special Economic Zone Act 2005[6] and the rule made thereunder;

(ii) If the demand cannot be sustained interest cannot be levied upon the appellant;

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6. SEZ Act

(iii) Penalty under section 114AA of the Customs Act could not have been imposed upon the appellant as the show cause notice did not call upon the appellant to show cause why penalty should not be imposed under section 114AA of the Customs Act; and

(iv) The principle of natural justice were violated as the relied upon the documents were not serve upon the appellant.

14. Shri Ajay Jain, learned special counsel appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

15. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

16. The first issue that arises for consideration in this appeal is whether duty could have been levied on the sale of M.S. scrap by the appellant to NTAL which is situated in SEZ.

17. This issue was examined by a Division Bench of this Tribunal in **Cummins Turbo Technology** vs. **Commissioner of Customs, Central Excise & Central Tax, Indore**[7]. After examining the provisions of the SEZ Act and the SEZ Rules. The Division Bench held as follows:

> "**31.** The charging sections, having been overridden by the SEZ Act, no legal authority to levy and collect central excise duty, customs duty or service tax for goods or services supplied for authorised operations of SEZ developers and units covered by section 26 remains. Without such a legal authority, no tax or duty

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> can be either levied or collected in view of article 265 of the Constitution of India."

18. Thus, the demand of duty from the appellant is deserves to be set aside interest, therefore, cannot be charged from the appellant.

19. When the duty demand has been set aside penalty under section 114 of the Customs Act could not have been imposed upon the appellant.

20. Penalty under section 114AA of the Customs Act could not have been imposed upon the appellant as even the show cause notice did not call upon the appellant to show cause by penalty under section 114 of the Customs Act could not have been imposed.

21. Thus, for all the reasons stated above, the impugned order dated 31.07.2019 passed by the Commissioner in so far as it concerns the appellant is set aside and the appeal is allowed.

(Order pronounced on **19.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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