CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 4

CUSTOMS APPEAL NO. 52160 OF 2024
(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-58 to 60-2024-25 dated 19.07.2024 passed by the Additional Commissioner, Customs, Indore)

Prabhat Chowdhry **...... Appellant**
7 E Kansari para Road,
Bhawanipur, Near Gurudwara,
Kolkata-700025

Versus

Commissioner of Central Goods and Service Tax, Excise and Customs-Indore **...... Respondent**
3rd Floor, B-Zone Business Space,
Pipliya Kumar, Nipaniya, Indore-452010

AND

CUSTOMS APPEAL NO. 50357 OF 2025
(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-58 to 60-2024-25 dated 19.07.2024 passed by the Additional Commissioner, Customs, Indore)

Mahesh Gowani **...... Appellant**
Kolkata

Versus

Commissioner of Customs (Imports)-New Delhi **...... Respondent**
3rd Floor, B-Zone Business Space,
Pipliya Kumar, Nipaniya, Indore-452010

APPEARANCE:
Ms. Divya Rastog and Shri A. Jaju, advocates for the appellant
Shri Rohit Issar and Shri Ram Parvesh Prasad, authorised representatives for the department

CORUM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION: July 10, 2026

FINAL ORDER NO. 51224-51225/2026

MR. ASHOK JINDAL:

The appellants are in appeal against the impugned order wherein penalty of Rs. 45 lakh is imposed on the appellant no. 2 and Rs. 2 lakh on appellant no. 1 under section 112(b)(i) of the Customs Act, 1962.

2. The facts of the case are that a seizure of 6,37,436 sticks of foreign brand cigarettes were recovered from the premises of appellant no. 2 for which the appellant could not produce the documents in support of procurement of those cigarettes. Therefore, the said cigarettes were absolutely confiscated. The appellant no. 1 stated that they have procured the cigarettes in question through e-auction in 2017 which were sold to the appellant no. 2 in 2019. Later on, appellant no. 2 has returned the cigarettes to appellant no. 1 and appellant no. 2 also sent those cigarettes to appellant no. 1. In these circumstances the adjudicating authority imposed the penalties on the appellants, that is 2 lakhs and 45 lakhs respectively. Against that order both the appellants are before me.

3. The learned counsel for the appellant no. 2 prayed that penalty of Rs. 45 lakh imposed on them under section 112(b)(i) of the Customs Act, 1962 is highly excessive and sought leniency in imposing the penalty on them. Further, learned counsel appearing on behalf of appellant no. 1 submits that the appellant has procured the said cigarette in question in 2017 through e-auction. To that extent, counsel has produced the document of procuring the said cigarettes through e-auction. It is further contended that the said cigarettes were sold to appellant no. 2 but no document has been produced regarding sale of the cigarettes to appellant no. 2. Again it is claimed that appellant no. 2 returned those cigarettes to appellant no. 1 and again appellant no. 1 sent those cigarettes to appellant no. 2 but no document has been produced on record and sought time to produce the same. Therefore, it is prayed that penalty on the appellant no. 1 is not imposable.

4. On the other hand, learned authorised representative for the department brought my attention to the impugned order stating that it is a false story by appellant no. 1 that they got the cigarettes from

appellant no. 2 and again sent them to appellant no. 2. During investigation and thereafter till today they have not produced any document. In that circumstances, penalty is rightly imposed on the basis of the statement of appellant no. 1.

5. Heard both the parties and considered submission.

6. I find that in this cases, although appellant no. 1 maintains the statement that these cigarettes have been sold to appellate no. 2 but no document has been produced on record in five years as matter came up in 2017. As, the appellant no. 1 has failed to produce document for receipt of these cigarettes from appellant no. 2 and sending back to appellant no. 2. In that circumstances, I find that penalty of Rs. 2 lakhs is rightly imposed on appellant no. 1 under section 112(b)(i) of the Customs Act, 1962. Therefore, I don’t want to interfere in the impugned order with regard to imposition of penalty against appellant no. 1.

7. With regard to appellant no. 2, I find that for confiscation of cigarettes amounting to Rs. 87,69,260/-, the penalty of Rs. 45 lakh under section 112(b)(i) of the Act is highly excessive, therefore, the penalty on the appellant no. 2 is reduced to Rs. 25 lakhs.

8. In these terms, the appeals are disposed of.

(MR. ASHOK JINDAL)
MEMBER (JUDICIAL)

Apoorva