CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

Customs Appeal No. 52204 of 2015

(Arising out of Order-in-Original No. 09/2015/DM/Pr.Commr./IMP/ICD,TKD dated 30.04.2015 passed by the Principal Commissioner of Customs (Import), ICD Tughlakabad, Delhi)

Sh. Avtar Singh Bedi Appellant
R/o B-3/8, IIIrd Floor, Paschim Vihar,
New Delhi

Vs.

Commissioner of Customs (Airport)- Respondent
New Delhi (ICD TKD)

Appearance:

Present for the Appellant: Shri Deepak Gandhi, Ms. Ida Bhatnagar & Shri Prateek Bhatnagar, Advocates

Present for the Respondent: Shri Anuj Kumar Neeraj, Authorized Representative

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 08.05.2026
Date of Decision : 03.09.2026

Final Order No. 51424/2026

Dr. Rachna Gupta

The present appeal is filed against the order-in-original No. 09/2015 dated 30.04.2015 and is being heard pursuant to the directions of hon'ble High Court Delhi in CUSA A. No. 272 of 2018 and Civil Misc. Application No. 42126 of 2018 vide order dated 12.08.2025 wherein it has been ordered as follows:

> "6. In this appeal, on 10th May 2022, both the ld. Counsels for the parties had submitted that the matter

> ought to await the decision in Canon-II. Now that the said decision has been pronounced by the Supreme Court, the present appeal deserves to be remanded back for fresh consideration by the CESTAT.
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> 7. Accordingly, the present appeal is allowed. The order of the CESTAT is set aside. The appeal of the appellant being ***C/52204/2015*** titled ***Shri Awtar Singh Bedi Vs. Commissioner of Customs, Delhi-II*** is restored to its original number before CESTAT."

2. Pursuant thereto the appeal is again before this Tribunal for decision on merits. The facts that culminated into the Order-in-Original dated 30.04.2015 are as follows:

2.1 The Directorate of Revenue Intelligence[1] investigated about the goods imported in two containers at 'ICD Tuklakabad' New Delhi. Bill of Entry No. 7140848 dated 18.6.2012 was filed by M/s. Mahadev Trading House. (proprietor Shri Vijay Sharma) and Bill of Entry No. 7140855 dated 18.6.2012 was filed by M/s. Avtar International. (proprietor Shri Sunil Kumar). Both Bills of Entry were filed by the common CHA M/s. Abhinav Cargo Movers (Proprietor Shri Tapasvi Singh). When both the containers were opened and examined by DRI officers, it was found that in addition to the declared goods, contraband in the form of 'Refrigerant R-22 gas', have also been imported. The import of R-22 gas was prohibited, it being an ozone depleting substance. Samples of R-22 gas cylinders were drawn from both the containers and were sent for testing to the Defence Research & Development Organization[2], Centre for Fire Explosives & Environment Safety, Delhi [3] for chemical analysis thereof. The CEFEES vide their analysis report dated 10.12.2012 confirmed that the cylinders contained R-22 gas

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1 **DRI**
2 **DRDO**
3 **CEFEES**

which is an Ozone Depleting Substance (in short ODS). The detailed examination of the cargo in both the containers revealed that the containers contained other consumer goods viz, table napkin papers, decorative items, AA cells etc. The goods in both the containers were seized by DRI and detailed investigations were taken up.

2.2 The salient points of the modus operandi unearthed by the DRI are summarised below:

(i) The Bills of Entry were filed by Shri Tapasvi Singh (CHA) as per the discussions he had with Shri Avtar Singh Bedi who approached him and handed over import related documents. Without verification of genuineness of the importer, the Bills of Entry were filed on the basis of understanding that CHA will be paid double the amount normally charged from clients for facilitating mis-declaration *qua* both the containers.

(ii) Shri Ajay Sharma, Abhishek Dua as well as Shamit Bhasin joined together and schemed to import prohibited/ restricted goods through dubious means by enticing certain persons through monetary consideration to open proprietary firms which were subsequently used for import of contraband. These three individuals advanced the money for such imports, travelled to China to purchase such contraband by paying cash and got them loaded in containers in such a way that the contraband is stuffed deep inside the container and other goods were used to conceal the same. Even the Bank accounts opened in the name of such firms were also operated by these three individuals.

(iii) The investigation revealed that the following four firms have been opened by the three individuals above. (1) Action Trading, Prop. Shri Rajesh Suri (2) Tirumalai Trading Prop Shri C P Sharma (3) Mahadev Trading House, Prop. Shri Vijay Sharma and (4) M/s. Avtar International Prop Shri Sunil Kumar.

The firms at S No. 3 and 4 were used for the impugned imports under investigation.

(iv) Shri Anil Mittal, associated with M/s. Steel Birds Impacts travelled to China and arranged for procurement of gas stroves which were used the containers for concealing the R 22 contraband.

(v) Shri Tapasvi Singh, CHA in his statements admitted that he had cleared the imports earlier made in the name of M/s Action Trading and Tirumala International. He and Avtaar Singh Bedi had hatched a plan to clear the R-22 cylinders concealing those in the two containers as per the instruction from Ajay Sharma, Abhishek Dua and Shamit Bhasin in return for receiving Rs.10 lakh.

2.3 During the course of investigation (which comprised of declared as well as undeclared goods) which were used to conceal R-22 were valued on the basis of market inquiry. The assessable value was arrived after permitting allowable deductions from the market price. Accordingly, the Show Cause Notice[4] bearing No. 46/2012 dated 19.12.2012 was served upon the appellant.

2.4 The adjudicating authority vide the impugned order has ordered as follows:

(1) R-22 gas cylinders were ordered for absolute confiscation,

(2) The assessable value of goods (other than R-22 cylinders) - both declared and undeclared - were redetermined and such goods were ordered for confiscation but allowed for redemption on payment of fine,

(3) Penalties were imposed on both the importers.

(4) Personal penalties were also imposed on various persons who were found involved in the act of smuggling.

3. I have heard learned counsels for the appellant and Shri Anuj Kumar Neeraj, learned Authorized Representative for Revenue.

4. Learned counsel for the appellant submitted that the penalty imposed on the appellant under Section 114AA is not warranted in the facts of present matter, more so when a penalty under Section 112A has also been imposed separately. The appellant did not make nor signed nor used any wrong declaration or document. The appellant Shri Avtar Singh Bedi merely collected the documents from Shri Ajay Sharma and handed them over to Shri Tapasvi Singh, CHA. Shri Tapasvi Singh in turn filed these papers before the Customs and got the goods cleared from Customs. He has admitted in his statement that he knew Shri Ajay Sharma from before as he had got his (Ajay's) goods cleared from the customs

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4 SCN

on earlier occasions also and that he was aware of the alleged mis-declaration at the time of filing the papers before the customs authorities. The provisions of this section can only apply to the importers and the CHA who filed the papers and got the goods cleared from the Customs because only their Acts/omission can be termed as "business under the Act."

4.1 Therefore, considering the provisions of Section14AA, it can be very safely said that Shri Avtar Singh Bedi neither made, nor signed, used or caused to be made any declaration, document during the course of 'business under the Act' and, therefore, the provisions of the Section 114AA cannot be invoked against him. The alleged participation of the appellant was not "in the course of business under the Act."

4.2 The appellant relied upon the decision in the case of **M/s Achiever International Vs. CCE** [5] wherein para 4.5 of the judgment, the Tribunal held that :

> "At any rate there is no justification for separate penalties under Sections 112A and 114AA."

4.3 The adjudicating authority has gone beyond the scope of the Show Cause Notice by imposing separate penalties under Sections 112A and 114AA and has thus violated the cardinal principals of natural justice.

5. Learned Departmental Representative, on the other hand, has reiterated the findings in the impugned order.

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5 2011 (268) ELT 94 (Tri.-Del.)

6. Having heard the parties and perusing the record of the appeal memo, I have observed that the present appeal has already been decided along with 5 other appeals of the co-noticees by this Tribunal vide its Final Order No. 57542-57547/2017 dated 02.11.2017. It has been held that Shri Avtar Bedi as well as Shri Tapsavi have conspired with the defacto importers i.e. Shri Abhishek Dua, Shri Ajay Sharma and Shri Shamit Bhasin for clearance of contraband in the containers. It has been admitted in the statements by both the persons that they had agreed to do the same in return for payment of cash of Rs. 10 lakhs. These as well as other facts of the case bring out the fact that these persons had played a serious role in the smuggling of prohibited R-22 gases. Consequently, penalties imposed on these persons are fully justified and are upheld.

6.1 Now coming to the plea of jurisdiction as was prayed to be the additional ground it is that Hon'ble Supreme Court, in Civil Appeal No. 1827 of 2018 had dealt with the issue as to whether, after clearance of the goods by the Customs, the proceedings could be initiated by the Directorate of Revenue Intelligence for recovery of duty not paid under Section 28(4) of 'the Customs Act 1962. It was held vide order dated 09.03.2021 that the proceedings initiated by Additional Director General of DRI by issuing demands are thus liable to be set aside. However, while reviewing the said decision in review petition no. 400 of 2021 in the aforesaid Civil Appeal vide judgment dated 07.11.2024 Hon'ble court held that offices of Directorate of Revenue Intelligence when appointed as offices of customs and assigned the relevant functions of a "proper officer" are competent to issue Show Cause Notices for recovery of custom duty under section 28 of the Customs Act, 1962. The judgment dated 09.03.2025 was reversed holding that said judgment overlooked relevant notification/circulars particularly Notification no. 44/2011 which assigned functions under Section 17 and 28 of the Customs Act to DRI offices. It also held that the earlier judgment incorrectly linked assessment under Section 17 of the Customs Act with recovery of short-period duty under section 28 thereof which are distinct statutory functions. In the light of this discussion the plea of jurisdiction of DRI officers to issue sent to the appellant is rejected. Hence, SCN is denied to be set aside for want of jurisdiction.

7. In totality of above discussion, the issue of jurisdiction stands decided against the appellant. On merits also the order under challenge is upheld, as discussed above. Consequent thereto, the appeal is dismissed.

(Pronounced in open Court on 03.09.2026)

(Dr. Rachna Gupta)
Member (Judicial)

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