CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 21561 of 2014
(Arising out of **Order-in-Original (denovo)** No.33/2013 (C.EX) (COMMR) dated 29.11.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Tirupati)

Pr. Commissioner of Customs (Preventive)Tirupati - CGST .. **APPELLANT**
9/86 A, Behind West Church
Compound,
Amaravathi Nagar,
M.R.Palli,
Andhra Pradesh – 517 502.

VERSUS

M/s Lord's Securities Mint Ltd., .. **RESPONDENT**
100%EOU, IDA,
Gajulamandyam,
Renigunta Road,
Tirupati,
Andhra Pradesh -517 502.

APPEARANCE:
Shri A. Rangadham, Authorized Representatives for the Appellant.
None for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30006/2026

Date of Hearing: 01.08.2025
Date of Decision: 09.01.2026

[ORDER PER: A.K. JYOTISHI]

Department has come in appeal against the Order-in-Original dated 29.11.2013, which has been passed by the Adjudicating Authority in denovo proceedings and wherein demand of customs duty and central excise duty amounts were confirmed and already paid was also appropriated along with penalty under Section 112(ii) of Customs Act 1962 and under Rule 25(b) of Central Excise Rules 2002 (impugned order). The Adjudicating Authority also gave an option to the respondent under proviso to Section 114A of Customs Act 1962 and Section 11AC(c) to pay 25% of the amounts of duty so confirmed towards penalty, apart from the applicable interest within 30 days from the date of communication of this order.

2. The case of the Department is that the Adjudicating Authority has wrongly allowed the option to pay reduced penalty of 25% of the amount in terms of Section 114A of Customs Act and Section 11AC(c) of Central Excise Act as the penalty was imposed under Section 112 of Customs Act and Rule 25 of the Central Excise Rules, for which the provisions of Section 114A and Section 11AC are not applicable and therefore to the extent, giving them the option is not as per law. The Department has also submitted that the respondent has already paid the interest demanded from them in terms of said order along with 25% of the penalty imposed, within 30 days of receipt of the said order.

3. Nobody appeared on behalf of the respondent.

4. Learned AR has reiterated the grounds taken by the Department in Appeal Memorandum.

5. The short question for determination in this appeal is whether the Adjudicating Authority was correct in extending the benefit of payment of 25% of imposed penalty in terms of provisions under Section 114A as well as under Section 11AC(c) of Central Excise Act or otherwise.

6. The respondent have also filed memorandum of cross objections, wherein they have sought relief for setting aside the portion of the order imposing penalty of Rs. 80,65,890/- under Section 112(ii) as the goods imported were not liable to confiscation under Section 111. Similarly, they have shifted that penalty imposed under Rule 25(b) of Central Excise Rules, 2002 is also liable to be set aside as indigenously procured goods are not liable

for confiscation under Rule 25(b) and the refund of penalty paid @ 25% of the total penalty by them be made by Department.

7. We find that since the appellants were aggrieved by certain part of the impugned order and therefore they are entitled to file cross objections and the same is to be treated as an appeal in terms of Section 129(4) of the Customs Act 1962.

8. Heard Learned AR and perused documents on record.

9. The brief facts of the case are that the respondents are 100% EOU and certain demands were made due to non-meeting of Net Foreign Exchange Earning (NFEE). A show cause notice dated 31.05.2012 was issued to the respondent and the Commissioner passed an order dated 31.12.2012 confirming demand in terms of B-17 bond and conditions of the relevant notification under which the goods have been procured without payment of duty. The respondent went to Tribunal against the said order and the Tribunal remanded back to the Commissioner to re-decide the matter after giving sufficient opportunity to the respondent to present their case. After following the due process of natural justice and hearing, the denovo proceedings were concluded by the Adjudicating Authority culminating into issuance of impugned Order-in-Original dated 29.11.2013 which is the subject matter of the present appeal filed by the Department as well as memorandum of cross objections filed by the respondent.

10. As per Section 114A, there is a provision that where any duty is determined in terms of sub-section 8 of Section 28 and interest payable thereon is determined under Section 28AA and if the same is paid within 30 days from date of the communication of the order, then the penalty liable to be paid by the person would be 25% of the duty or interest so determined, as the

case may be. Therefore, what is crucial to determine whether Section 28 of Customs Act has been invoked for recovery of demand in the present appeal or not. Section 28 is a provision under which recovery of duty not paid or short paid or erroneously refunded is to be made. In the present appeal, apart the procurement from indigenous source, imports were allowed in terms of certain notifications without payment of applicable customs duty and central excise tax. However, on noticing that the notificational conditions have not been met the demand was raised on them for recovery of duty not paid under Customs Act as well as under Central Excise Act. In the impugned order, the interest has been levied under Section 28AB. Essentially, therefore, the provisions that the demand of short levy, non-levy is to made in terms of Section 28 and the interest will also be applicable under Section 28AA or for that matter under Section 28AB, as it existed during material time. Similar provisions, under Central Excise Act also exist where Section 11AC(c) provides for similar payment of 25% of the duty as penalty.

11. We find that the show cause notice has been issued proposing as to why the custom duty on imported raw material should not be paid under Section 28 of Customs Act 1962 read with condition of Notification No. 52/03-Cus dated 31.03.2003, as amended and also Central Excise duty should not be paid by them under Section 11 of Central Excise Act read with condition of Notification No. 22/03-CE dated 31.03.2003. Thus, it is obvious that in both the demands for customs duty as well as Central Excise duty, the provisions of Section 28 for the Customs duty and Section 11 for the Central Excise duty has been clearly invoked by the Department.

12. In so far as the cross memorandum filed by the respondent is concerned, we find that admittedly, the respondent have already availed themselves of the option of reduced penalty. The respondent have now contested that there was

no ground for imposing penalty under Section 112 as the goods have been confiscated under Section 111(o) of the Customs Act. It is submitted that only if duty and interest are not paid on demand, as specified in Notification No. 52/03 and 22/03, the goods would become liable to confiscation. Further, in their case, the non-observation of the condition would come into play only when the person did not pay duty and interest on the payment attaining finality. Similarly, even in the case of indigenously procured goods, it was held liable for confiscation under Rule 25(B) without elaborating the grounds under which the said confiscation was held tenable. Therefore, there are no categorical findings that the respondent had not accounted for any excisable goods produced or stored by him.

13. We find that the Adjudicating Authority has demanded duty for non-fulfilment of conditions of the notification under which duty free imported and domestic goods were allowed. There is no denial that conditions were fully met. The reliance was placed by respondent on certain case laws, however, the Adjudicating Authority has not entertained similar view as held in those cited cases and relied on certain judgments namely M/s Mysore Minerals Ltd., Vs CCE, Mysore [2013 (293) ELT 108 (Tri-Bang)], wherein, it was held that provisions under Section 111(o) specifically covers a situation where any goods exempted subject to any condition from duty or provision and the said conditions are not observed unless the non-observance of the condition is sanctioned by the proper Officer. While the respondent is canvassing that they have already paid the duty and penalty and therefore the non-observance of the condition as alleged by the proper Officer, is not correct. Section 111(o) is for situation where non-observance of the conditions of notification may lead to imposition of penalty unless the said non-observance is categorically allowed by the Competent Authority or proper Officer. Therefore, we find that the penalty imposed under Section 112(ii), as it existed during the material time,

could have been penalty not exceeding the duty sought to be evaded or Rs. 5,000/- whichever was greater.

14. Further, we find that the contention of the Department is that since the penalty has been imposed under Section 112(ii), therefore, the option of 25% could not have been extended as there was no such provision during the relevant time. We find that Section 112(ii) is providing for penalty, which can be Rs. 5,000/- or it may go upto an amount equal to duty sough to be evaded. In other words, it is not in the nature of mandatory penalty and any amount of penalty in between these two limits could be imposed. In this case, we find that the Adjudicating Authority has imposed the maximum penalty, which is equivalent to the duty demanded/evaded. We find that prior to 14.05.2015 there was no provision for invoking Section 114A while deciding penalty in terms of Section 112(ii). The amended provision under Section 112(ii) provides for the option for paying reduced penalty. In other words, there was no such option available for penalty imposed under Section 112 during the material period and the option was only under Section 114A which had not been invoked for imposing penalty in the present appeal. Therefore, we find merit in the appeal filed by the Department. Therefore, the appeal is allowed by way of remand. Original Adjudicating Authority, who shall re-determine the amount of penalty in accordance with the provisions under Section 112(ii), as was in existence during the relevant time. However, no option can be given for reduced penalty thereof.

15. We find that since in the case of Departmental appeal, the matter is already being remanded for re-determination of penalty in the facts of the case, we consider it appropriate to remand the grounds taken in cross memorandum, which is now to be treated as an appeal to the same Original Authority, who shall also take into account the arguments made by the

respondent for imposition of penalty under Section 112(ii) and thereafter pass appropriate order.

16. Appeal and Cross Memorandum are allowed by way of remand.

(Pronounced in open court on 09.01.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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