

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86067 OF 2014

[Arising out of Order-in-Appeal No: 1366 (CFS-MULUND)/2013(JNCH)/IMP-1103 dated 19th December 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Nitin Overseas

Flat No. H-1, Plot No. 33, Aruna Apartments
LP Extension, Patparganj, Delhi - 110092

... Appellant

versus

Commissioner of Customs (Import)

ICD, Mulund-Goregaon Link Road, Mulund
Mumbai.

...Respondent

APPEARANCE:

Shri Prabhat Kumar, Advocate for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: 87545/2024

DATE OF HEARING:	03/12/2024
DATE OF DECISION:	03/12/2024

PER: C J MATHEW

This appeal of M/s Nitin Overseas lies within the narrow
compass of enhancement of penalty, on appeal filed by jurisdictional

Commissioner of Customs before the Commissioner of Customs (Appeals), Mumbai – II, Jawaharlal Nehru Customs House, Nhava Sheva, holding that the original authority had erred in imposition of penalty under section 112 of Customs Act, 1962 instead of resorting to section 114AA of Customs Act, 1962 while confirming recovery of duties of customs under section 28 of Customs Act, 1962.

2. Learned Counsel for the appellant submitted that the order¹ of the first appellate authority no longer has standing as the issue of duty liability had been dropped by the Tribunal in their favour *vide* final order² disposing off, *inter alia*, their customs appeal³ challenging order⁴ of Commissioner of Customs (Appeals), Mumbai-I.

3. We have heard Learned Authorised Representative

4. On perusal of the records, we find that the original authority had confirmed duty liability of ₹ 42,68,861 under section 28 of Customs Act, 1962, along with applicable interest under section 28AB of Customs Act, 1962, and, while imposing penalty of ₹ 21,00,000 on the proprietor under section 112 of Customs Act, 1962, had dropped proposal for imposition of penalty under section 114A of Customs Act, 1962. While the appellant herein had carried its grievance over duty recovery to the first appellate authority, the jurisdictional

¹ [order-in-appeal no. 1366 (CFS-MULUND)/2013(JNCH)/IMP-1103 dated 19th December 2013]

² [final order no. A/86594-86607/2019 dated 13th September 2019]

³ [customs appeal no. 1017 of 2012]

⁴ [order-in-appeal no. 454-455/MCH/JC/ICD/CFS(M)(I)/2012 dated 07th August 2012]

Commissioner of Customs had directed filing of appeal against non-imposition of penalty under section 114A of Customs Act, 1962 and it is the disposal of the latter that is now before us.

5. On perusal of the records, we find that the order-in-original had been challenged before the first appellate authority by appellant herein that came to be disposed off *vide* order⁵ rejecting their plea for relief but, on further appeal, was disposed off by the Tribunal in *Nitin Overseas v. Commissioner of Customs (Import), Mumbai*, referred to by Learned Counsel *supra*, holding that demand did not survive.

6. Accordingly, in the absence of confirmation of demand, imposition of penalties under section 114A of Customs Act, 1962 cannot sustain. Consequently, the appeal is allowed.

(Operative part of the order pronounced in open court on 3rd December 2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*

⁵ [[order-in-appeal no. 454-455/MCH/JC/ICD/CFS(M)(I)/2012 dated 07th August 2012]