CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 1

CUSTOMS CROSS APPLICATION NO. 85608 OF 2021
IN
CUSTOMS APPEAL NO. 85240 OF 2021

(Arising out of Order-in-Original No. 61/SA(61)ADG(ADJ.)/DRI-MUMBAI-2020-21 dated 12.10.2020 passed by the ADG(ADJ.), DRI, Mumbai.)

YUSUF DHANANI **FLAT NO. 2401, VIVANT-NATIONAL GROUP,** **PLOT NO.4, SECSTOR-19, OFF PLAM BEACH,** **SANPADA, NAVI MUMBAI-400705.**	**Appellant**

Vs.

COMMISSIONER OF CUSTOMS, MUMBAI ADJ **2ND Floor, Old Building, New Customs House,** **Ballard Estate, Mumbai-400 001.**	**Respondent**

Appearance:
Shri Abhishek Deodhar, Advocate for the Appellant
Shri Ram Kumar, D.C., A.R. for the Respondent:

CORAM:
HON'BLE MR. Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85073/2025

Date of Hearing: **22.01.2025**
Date of Decision: **22.01.2025**

This appeal is filed by Shri Yusuf Dhanani on whom personal penalty of Rupees five lakhs was imposed by the adjudicating authority u/s. 112(a) of the Customs Act after the matter was remanded back by this Tribunal for reconsideration of penalty amount vide its order dated 10.05.2012 after setting aside personal penalty of Rupees Twenty Lakhs imposed on the Appellant with a direction for reconsideration of penalty.

2. Matter is heard today from both the sides. Learned Counsel for the Appellant, in submitting synopsis on the issue, informs that Appellant has challenged the legality of imposition of personal penalty on him when confirmation of duty was only on account of non-fulfilment of export obligation

to which Learned Authorised Representative contested in saying that Appellant himself has volunteered that in the event, the Adjudicating Authority finds it judicious to impose penalty, the same may kindly be restricted to Rupees Two Lakhs, which was already deposited by the Appellant before this Tribunal as pre-deposit, after the appeal was filed and therefore, the said statement which is recorded in para 2.9 of the order can be taken as Appellant's admission as well as willingness to close the litigation by way of adjustment of the amount of Rupees Two Lakhs paid by him is restricting the penalty imposed on him under section 112(a)(ii) to the same amount.

3. I have gone through the case records and the relevant provisions of law, Appellant was Director in M/s. Divya Chemicals Limited that had gone for liquidation in 2002 and the period of dispute during which import had taken place and penalty was imposed on him, is now about thirty years old during which time under section 112(a)(ii), equal penalty was prescribed as the maximum penalty that can be imposed, if the same is above Rupees Five Thousand but the statute had undergone a change in 2015 reducing the penalty maximum to 10% of the dutiable amount with effect from 14.05.2017. When duty was confirmed as Rupees 1,08,34,859.49/- taking into consideration situational factors and Appellant's submission, learned Adjudicating Authority had imposed penalty of Rupees Twenty Lakhs and at that time, full amount of duty could have been imposed on the Appellant also as law was prevailing then. Thereafter, taking into account the leniency shown by the Adjudicating Authority, as suggested by the Learned Counsel for the Appellant and offered by the Appellant himself, penalty amount was further reduced to Rupees Two Lakhs primarily for the reason that it is noted in the order passed by the Additional Director General (Adj), Mumbai, in para 5.7 of his order that duty confirmed originally was not calculated properly and after recalculation they could notice that duty forgone was Rs. 70,96,187/- instead

of Rs. 1,08,34,859/- as demanded in show-cause notice and confirmed initially by the Adjudicating Authority in the first round of litigation.

4. Taking note of the submission and maintaining parity with the order that is passed earlier in respect of the proportion of duty *viz.a.viz*. personal penalty, I am also of the considered view that ends of justice would better be served by restricting the penalty to Rupees Two Lakhs as voluntarily agreed by the Appellant before the Adjudicating Authority, since the matter relates to non-fulfilment of export obligation due to certain constraints that resulted in cancelation of Export /EO Order. Hence the Order.

<u>The Order</u>

5. The Appeal is allowed and the order passed by the ADG (ADJ.), Mumbai vide Order-in-Original No. 61/SA(61)ADG(ADJ.)/DRI.MUMBAI/2020-21 dated 12.10.2020 is modified in reducing the personal penalty from Rupees Five Lakhs to Rupees Two Lakhs, to be adjusted against pre-deposit made before this Tribunal.

6. Cross Objection filed by the Respondent Department is also disposed of.

(Dictated and pronounced in the open court)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

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