## CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

## WEST ZONAL BENCH

### CUSTOMS APPEAL NO: 85454 OF 2020

[Arising out of Order-in-Original No: GOA-EXCUS-000-COM-013-19-20 dated 31st October 2019 passed by the Commissioner of Central Excise & Service Tax, Goa.]

**KK Enterprises**
No.664, Thiruvottiyur High Road, Tondiarpet
Chennai - 600081 … ***Appellant***

*versus*

**Commissioner of Customs & Central GST**
Patto Plaza,Panaji, Goa - 403001 ***…Respondent***

**WITH**

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[Arising out of Order-in-Original No: GOA-EXCUS-000-COM-013-19-20 dated 31st October 2019 passed by the Commissioner of Central Excise & Service Tax, Goa.]

**Vijay Kothari**
No.664, Thiruvottiyur High Road, Tondiarpet
Chennai - 600081 … ***Appellant***

*versus*

**Commissioner of Customs & Central GST**
Patto Plaza,Panaji, Goa - 403001 ***…Respondent***

*APPEARANCE:*

Shri MA Mudimannan, Advocate for the appellants

Shri Krishna Azad, Assistant Commissioner (AR) for the respondent

**CORAM:**

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

**FINAL ORDER NO: 85317-85318/2025**

DATE OF HEARING: 03/03/2025
DATE OF DECISION: 03/03/2025

This appeal lies against imposition of penalty, purportedly linked to evasion of duty of customs of ₹ 11,34,885 suggested as having been determined, upon the appellants herein, M/s KK Enterprises and Shri Vijay Kothari, under section 112(b) of Customs Act, 1962. It appears that the former had sourced 550 MTs of 'non-alloy steel melting scrap' through Chennai port and, having disposed off the same on 'high sea sales', M/s Twenty First Century Wire Rods Ltd had, against bill of entry no. 2739/04.02.2002, cleared the goods at concessional rate of duty on furnishing of 'end-use certificate' issued by the jurisdictional Deputy Commissioner of Central Excise as prescribed in notification[1] under section 25 of Customs Act, 1962.

2. It appears that the differential duty liability of ₹ 11,34,885/- is not the subject of any proceedings as far as the records of both sides are concerned. It also appears that the adjudicating authority had denied cross-examination, sought by the appellants herein, in proceedings initiated only for imposition of penalty under section 112 of Customs Act, 1962.

[1] [no. 17/2001-Cus dated 1st March 2001]

3. Learned Counsel for the appellant and Learned Authorised Representative were heard at length.

4. It is seen that the adjudicating authority has drawn upon

> *'33. This order is protected by the provisions of Section 174 of the Central Goods and Service Tax Act, 2017'*

which, being unknown to determination of disputes under Customs Act, 1962, is demonstrative of lack of application of mind. Denial of opportunity to cross-examine deponents in proceedings limited to imposition of penalty under Customs Act, 1962, and, that too, founded solely on statements recorded under section 108 of Customs Act, 1962, is in breach of section 138B of Customs Act, 1962.

5. Compounding these, it is also seen that there is neither proposal for, nor determination that, impugned goods were liable to confiscation under section 111 of Customs Act, 1962; failure to render such determination is fatal to the proposal for imposition of penalty under section 112 of Customs Act, 1962.

6. Accordingly, the impugned order is set aside and appeals are allowed.

*(Dictated and Pronounced in Open Court)*

**(C J MATHEW)**
***Member (Technical)***

**/as*