CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85215 OF 2014

[Arising out of Order-in-Appeal No: 1068 & 1069 (ADJN-IMP)/2013(JNCH)/ IMP-826 & 827 dated 29th October 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Jitendra A Jasani
308 Adamji Building, 413 Narshi Natha Street
Mumbai - 400009 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85216 OF 2014

[Arising out of Order-in-Appeal No: 1068 & 1069 (ADJN-IMP)/2013(JNCH)/ IMP-826 & 827 dated 29th October 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Mine Chem (India)
308 Adamji Building, 413 Narshi Natha Street
Mumbai - 400009 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Anil Balani and Ms P Pawar, Advocate for the appellants

Shri Ranjan 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: 85470-85471/2025

DATE OF HEARING:	05/11/2024
DATE OF DECISION:	24/03/2025

PER: C J MATHEW

The limited issue in these appeals is the imposition of penalty under section 114A on the appellant-assessee and under section 112(a) and under section 114AA of Customs Act, 1962 on the appellant-individual which, on challenge was disposed off in order[1] of Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva impugned here, with upholding of confiscation while redemption fine under section 125 of Customs Act, 1962 was reduced to ₹ 3,00,000.

2. Learned Counsel for the appellant submitted that 'maleic anhydride' ordered by M/s Shlok Chemicals had been sold to M/s Mine Chem (India) on 'high seas sale' following which bill of entry had been filed by them though with value loaded by 2% over that at which M/s Shlok Chemicals had transacted with their suppliers overseas. On the determination that the value at which M/s Mine Chem (India) had transacted with M/s Shlok Chemicals was the 'transaction value', they had deposited differential duty of ₹ 2,20,193; that is not under challenge in this appeal.

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[1] [order-in-appeal no. 1068 & 1069 (ADJN-IMP)/2013(JNCH)/ IMP-826 & 827 dated 29th October 2013]

3. Learned Counsel for the appellants submitted that their sole grievance is that the first appellate authority upheld the confiscation of the goods under section 111(d) and section 111(m) of Customs Act, 1962 but, while lowering the fine in lieu of confiscation from ₹ 6,00,000 to ₹ 3,00,000, retained the penalties under section 114A of Customs Act, 1962 on the importer and under section 112 as well as under section 114AA of Customs Act, 1962 on the individual appellant herein despite their protestation of not having been responsible for the declaration.

4. According to Learned Counsel for the appellants, they could not be charged with mis-declaration inasmuch as they had complied with the normal practice of 2% loading over the back-to-back purchase price and it was also contended that, though they had filed bill of entry, every aspect of the clearance was undertaken by M/s Shlok Chemicals, the high seas seller. It is also submitted that, upon the facts emerging in consequence of the investigation, they had declined to take possession of the goods.

5. Learned Authorised Representative relied upon the findings in the impugned order to contend that the appellant had admitted to the adoption of value lower than the price at which they had contracted with their seller.

6. The provisions of Customs Act, 1962 are very clear insofar as the obligation of the importer is concerned. It is not the case of the appellant there they are not the importers; it is their case that they were not

responsible for declaration in bill of entry that was handled entirely by the seller. The goods were found to have been undervalued and, consequently, differential duty was determined. The differential duty paid voluntarily was not challenged in appellate proceedings. The claim of the appellant that they have nothing to do with the content of bill of entry is clear abdication of responsibility that devolves on importer. In the facts and circumstances, we see no justification other than specious plea for discharge from failure to comply with Customs Act, 1962 to make a correct declaration for the purpose of entry contemplated under section 46 of Customs Act, 1962. That the goods were liable to confiscation under section 111(m) of Customs Act, 1962 has not been countered. Consequently, we do not see any reason to interfere with the confiscation or with the detriments of fine of ₹ 3,00,000 under section 125 of Customs Act, 1962 for redemption thereof or with the penalties imposed on the importer as well as individual concerned with the import.

7. For the above reasons both the appeals are dismissed as being devoid of merit.

(Order pronounced in the open court on 24/03/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*