CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 5

CUSTOMS APPEAL NO. 86165 OF 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1924/2021-22 dated 15.03.2025 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai.)

S A DALAL AND CO
277, CHANDRAMANI DEODHAR ROAD
MATUNGA, MUMBAI-400019.

Appellant

Vs.

COMMISSIONER OF USTOMS(IMPORT),
MUMBAI(AIR CARGO IMPORT)
AIR CARGO COMPLEX, NAVPADA,
SAHAR VILLAGE, ANDHERI EAST,
MUMBAI-400099.

Respondent

Appearance:
Shri N. D. George, Advocate for the Appellant.
Shri Dinesh Nanal, Dy. Commissioner, Authorised Representative for the Respondent:

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

FINAL ORDER NO. A/85887/2025

Date of Hearing : **09/05/2025**
Date of Decision: **10.06.2025**

Legality of the penalty imposed u/s. 112A of the Customs Act, 1964 on appellant CHA is assailed in this appeal.

2. I have heard from both the sides on the other day.

3. Facts of the matter would go to show that appellant was put to show-cause on the basis of statement recorded from the Importer Shri Prabhat Tarsaria, Proprietor of M/s. P. T. Mobile and Accessories and another Director of M/s. Parikh Clearing Agency, Mr. Rupin Parekh u/s. 108 of the Customs

Act, and without appellant being summoned for its statement or without any record /documents being seized form appellant's possession during investigation, it had to suffer adjudication process that resulted in imposition of penalty of Rs. Ten lakhs u/s. 112A of the Customs Act. Appellant's unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to the present forum.

4. In this context, finding of the Commissioner (Appeals) in his order dated 15.03.2022 at para 5(ii) of worth reproducing:

> *Further the contention of the importer that "Neither their statement was recorded nor any investigation done against them." I find as far as investigation is concerned, investigation with regard to their role has been carried out. However as far as recording of their statement is concerned, I don not find that there is any pre requisite of recording of statement for imposing penalty under section 112.*

5. During the course of hearing Ld. Counsel for the Appellant, with reference to case laws reported in –(a) Enterprise International Ltd versus Commr of Cus.(Port), Kolkata reported in 2010 (259) E.L.T. 629 (Tri.-Kolkata) and (b) Warren Trading Pvt. Ltd versus Commissioner of Customs, Kandla reported in 2008 (222) E.L.T. 313 (Tri.-Ahmd.), submitted that judicial precedent is set on the issue that when investigation has not been conducted at the appellant's end and nothing incriminating has been recovered from the Appellant's premises and even statement of the appellant was not recorded, fine imposed on the appellant is not sustainable. Further, as could be noticed from the adjudication order, appellant had contested against such proposal for imposition of penalty on the ground that show-cause was based on oral deposition of certain persons and documents

recovered from other persons, to which no evidence of undervaluation can be attributed since none of them had stated that appellant CHA was aware of the undervaluation.

6. Though Ld. Authorised Representative Shri Dinesh Nanal, reiterated the findings of the Commissioner (Appeals), I am not agreeable to such findings as noted above for the reason that apart from principle of natural justice being violated in bringing someone to trial stage without giving him any opportunity to defend himself at the time of investigation, section 114 Illustration (b) of the Indian Evidence Act clearly states that statement of accomplice /co-accused is unworthy of credit unless he is corroborated with material particulars. Hence the order.

The Order

7. The appeal is allowed and the order No. MUM-CUSTM-AMP-APP-1924/2021-22 dated 15.03.2025 passed by the Commissioner (Appeals) confirming penalty of Rupees Ten Lakhs on the Appellant CHA M/s. S A Dalal And Co is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 10.06.2025)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

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