CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 898 OF 2009

[Arising out of Order-in-Original No: 105/2009 dated 18th May 2009 passed by the Commissioner of Customs (Import), Nhava Sheva.]

Kiran M Choksi
Flat No. 4, 1st Floor, Keshav Nivas
20 Nepeansea Road, Mumbai - 400036 … ***Appellant***

versus

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

APPEARANCE:

Shri Anil Balani and Ms Priyasha Pawar, Advocates 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: 85966/2025

DATE OF HEARING: 11/11/2024
DATE OF DECISION: 13/05/2025

PER: C J MATHEW

This appeal of M/s Kiran M Choksi lies against imposition of penalty of ₹ 1,00,00,000 under section 112(a) of Customs Act, 1962 in order[1] of Commissioner of Customs (Import), Nhava Sheva.

2. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

3. Penalty was imposed on the appellant on conclusion of proceedings pertaining to alleged mis-use of 'high density polyethylene (HDFC), low density polyethylene (LDPE), poly vinyl chloride (PVC), ethyl vinyl acetate (EVA) and similar articles imported against advance licence by diversion into local market instead of subjecting them to manufacturing process and export as obliged under the said licence and in contravention of notification[2]; by resort to 16 such licences, involving goods valued at ₹ 4,27,43,482, duty of ₹ 2,41,86,241 had been foregone. The appellant claims that they were not in any way connected with the imports and that, in similar proceedings, a proposal for imposition of penalty was found to be inappropriate by the adjudicating authority which, with consequent affirmation by the Tribunal, would negate applicability in the circumstances of their case and further relied upon order[3] of the Tribunal disposing off appeal[4] against order[5] of the Commissioner of Customs (Export Promotion), Mumbai in *Commissioner of Customs (EP), Mumbai v. Sahil Industries.*

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[1] [order-in-original no. 105/2009 dated 18th May 2009]
[2] [no. 43/2002-Cus dated 19th April 2002]
[3] [A/86900/16/CB dated 1st April 2016]
[4] [C/805/2006]
[5] [order-in-original no. 34/2005/CAC/CC/RJM dated 23rd May 2005]

4. On going through the impugned order, *we* find that the goods concerned had been confiscated under section 111(d) and section 111(o) of Customs Act, 1962 and there was no further challenge to the confiscation. Accordingly, appropriateness of

> *'112. Penalty for improper importation of goods, etc.*
>
> - *Any person,*-
>
> *(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or'*

of Customs Act, 1962 is all that remains in dispute.

5. The adjudicating authority has held thus

> *'62.14. Vide reply in defence filed by Shri Kiran Choksi filed through his advocate Shri Anil Balani denied all the allegations made in subject Show Cause Notice. I relied upon the contents of the various statements of co-accused and witnesses recorded under Section 108 of the Customs Act, 1962. As per the records, none of the statement was retracted, which stands to the truthness and legality of the same. Vide their respective statements, Shri Raju Doshi, the proprietor of M/s Shree Rajshri Plastic and Shri Satyendra Sawant, the proprietor of M/s Sahil Industries have interalia stated that they have only signed the documents and lent the names of their proprietary firms to Shri Kiran Choksi, only for the monitory consideration. Shri Kiran Choksi placed the orders with foreign supplier, dealt with high sea sellers, made arrangement of clearance of the impugned imported goods*

through CHA and selling them in the open market. These facts were also confirmed by the statements Shri Pragnesh Jain, the CHA's Employee who cleared the 18 consignments stating that, the employees of Shri Kiran Choksi handed over all the requisite documents, instructions and payments ,and the goods were delivered to the employees of Shri Kiran Choksi. Further the statement of Shri Sachin Naik and Gajendra Singh dated 05.05.03 also confirmed that, their employer Shri Kiran Choksi allotted them the work relating to M/s Shree Rajshri Plastic and M/s Sahil industries. Further, the statements of Shri Chetan Thakkar the broker dealing, in high sea sales with Shree Rajshri Plastics confirms the same. In his statement Shri Thakkar interalia stated that, he gave all the information/documents regarding High Sea sales to Shri Kiran Choksi at Shri Choksi's shop and in turn Shri Kiran Choksii made all the payments through cheques & drafts. From the above, it is established that, it is the modus of operandi of Shri Kiran Choksi to lure people like S/Shn Raju Doshi and Sawant to start a firm, obtain necessary documents required for obtaining Advance licence by fraudulent means, and import goods without payment of customs duty, under those fraudulently fined licences and sell duty free goods under obligation of export, in local market, violating the provisions of DEEC Scheme. Thus, I find that, Shri Kiran Madhukar Choksi along with M/s Shree Rajshri Plastics and its proprietor Shri Raju Doshi d illegally diverted goods imported under 18 Bills of Entries having total Assessable Value of Rs.4,27,42,483/-. (as detained, in Annexure 'A' to SCN) and having duty involvement of which were cleared and disposed off in the local market illegally and sale proceeds have been pocketed by Shri Kiran Choksi, inclusive of the duty component availed as exemption under DEEC Scheme. I observed that, Shri Kiran Madhukar Choksi conceived and executed whole fraud with cunningness

> *of highest grade as he kept himself disassociated from all the documentary procedures. Therefore, for these omissions and commissions in the fraudulent import of the impugned goods under 18 Bills of Entries against said Advance Licenses in the name of M/s. Shree Rajshri Plastics, having total Assessable Value of Rs.4,27,42,483/-and sellin the same local market without fulfilling the export obligation, I, find that, Shri Kiran Madhukar Choksi is liable for penal action under Section 112 (a) of Customs act, 1962.'*

6. The contention of Learned Counsel on applicability consequent upon the decision to drop proceedings in relation to imports effected by M/s Sahil Industries has been distinguished by the Learned Authorized Representative on the submission that the penalty therein was imposed under section 114A of Customs Act, 1962 which could be fastened only on person held as liable to duty thereof under section 28 of Customs Act, 1962. According to Learned Authorized Representative, the present case stands entirely on different footing. We find that this submission of the Learned Authorized Representative is not to be discarded that there is a substantial difference between imposition of penalty under section 114A and under section 112 of Customs Act, 1962. We also find that the decision of the Tribunal in *Mohan Nair v. Commissioner of Customs (Import), Nhava Sheva [2019 (369) ELT 1264 (Tri.-Mumbai)],* did find the activities of the appellant therein to be deserving of the penalties under section 112 of Customs Act, 1962. In the light of the clear finding on the role of the appellant in connection with the procurement, and 'post-importation movements' of the

imported goods that were held, and unquestionably so, as liable to confiscation, we see no reason to interfere with the penalties so imposed.

7. Accordingly, appeal is dismissed.

(Order pronounced in the open court on 13/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*