CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 85445 of 2017

(Arising out of Order-in-Original No. 91/2016-17/Commr/NS-III/JNCH dated 06.01.2017 passed by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva)

Kwick Cargo Tracers & Lifters .....**Appellant**
Mitha Mansion, 3rd Floor, 319-A,
SB Singh Road, Mumbai

VERSUS

Commissioner of Customs (NS-III), Mumbai .....**Respondent**
JNCH, Tal.Uran, Dist. Raigad

APPEARANCE:

Shri L B D'Costa, Advocate for the appellant
Shri P K Acharya, (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 86407/2025

DATE OF HEARING : 11.06.2025
DATE OF DECISION : 07.10.2025

Per: AJAY SHARMA

This appeal is directed against the impugned Order in Original dated 6.1.2017 passed by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva whereby a penalty of ₹ 1 lakh was imposed on the appellant-CHA u/s.112(a) of the Customs Act, 1962.

2. The appellant herein was a co-noticee in the impugned proceedings, while M/s. Sirthai Superware India Ltd. was the main noticee, being the importer of the goods in issue namely, *'Melamine ware viz. Kitchenware and Tableware'*. Vide the same impugned order dated 6.1.2017, penalty was imposed on the main noticee-importer also u/s.112(a) ibid alongwith confirmation of demand of differential customs duty with interest and equal penalty.

3. The said importer M/s. Sirthai Superware India Ltd. challenged the very same impugned order dated 6.1.2017 before this Tribunal by way of Customs Appeal No. 85603 of 2019, wherein this Tribunal vide its final order dated 10.10.2019, reported in *2019(10) TMI 460- Cestat Mumbai,* set aside the impugned order and remanded the matter back to the learned Commissioner for re-determination and re-quantification of demand. Significantly, the penalty of Rs. 1,00,000/- imposed on the importer u/s. 112(a) ibid was set aside by this Tribunal, while observing as under:-

> *"xxx xxx xxx*
>
> *4.9 From plain reading of the said clauses of Section 111, we do not find that these sub-clauses, are applicable to cases where the classification of claim of exemption is found to be erroneous. The fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of these two causes. Hence the order holding goods liable for confiscation and imposition of penalty under section 112(a) cannot be sustained."*
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> *[emphasis supplied]*

4. It is evident from the above that the Tribunal held this case to be one of mere erroneous classification on the part of importer-main noticee. Consequently the penalty imposed on the said importer u/s.112(a) ibid was held to be unsustainable.

5. In view of the above, since the goods have already been held by this Tribunal to be not liable for confiscation u/s. 111 ibid, the penalty imposed on the appellant herein – CHA u/s.112 (a) ibid also cannot be sustained. The appellant, being a co-noticee and not the importer, cannot be visited with penalty when the same has been set aside for the main noticee by this Tribunal (supra).

6. Accordingly the impugned order, so far as it relates to imposition of penalty on the appellant u/s. 112(a) ibid, is hereby set aside. The Appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 07.10.2025)

(Ajay Sharma)
Member (Judicial)

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