CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 659 OF 2009

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

Pragnesh Jain
804 Amrut Porbunderwala Complex, SN Road
Mulund West, Mumbai - 400080 … ***Appellant***

versus

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

APPEARANCE:

Shri Prithwiraj Choudhuri, Advocate for the appellant

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: 86413/2025

DATE OF HEARING: 18/03/2025
DATE OF DECISION: 17/09/2025

PER: C J MATHEW

This appeal of Shri Pragnesh Jain relates to proceedings initiated against M/s Shri Rajshri Plastics for alleged diversion of ‘spectacle frames' valued at ₹ 4,27,43,482 on which duty liability of ₹ 2,41,86,242 was ordered to be recovered in order[1] of Commissioner of Customs (Import), Jawaharlal Nehur Custom House, Nhava Sheva for having been diverted despite condition of import under 'advance licence' requiring consumption for manufacture and export of specified goods. In addition to the interest liability, penalties were imposed on the importer as well as others, including the present appellant, under section 112 of Customs Act, 1962 for acts of omission and commission that contributed to confiscation of the goods under section 111(d) and section 111(o) of Customs Act, 1962.

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

3. The adjudicating authority had held the appellant herein liable to penalty of ₹ 10,00,000 under section 112 of Customs Act, 1962 on the finding that

> *'62.17 Shri Pragnesh Jain employee of CHA, who have cleared the impugned imported goods on behalf of M/s Shree Rajshri Plastics had denied the charge of knowledge of diversion of goods imported under Advance Licence under Notification No 43/2002. But his statements show otherwise. As per his statements given to the investigation authorities under Section 108 of Customs Act, 1962, he had admitted that, he had received the documents pertaining to imports of M/s*

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[1] [order-in-original no. 105/2009 dated 18th May 2009]

Shree Rajshri Plastics and well as M/s Sahil Industries from Shri Kiran Choksi and that on the instructions of Shri Choksi he had handed over the goods S/Srhi Sachin Naik and Gajendra Singh. Shri Pragnesh Jain knows from the Bills of entries and the connected invoices and the DEEC Pt-I, that the goods cleared under notification are meant for M/s Shree Rajshri Plastic, and he also knew that, those were not to be dealt in any other manner than to use in the manufacture of export goods/resultant products, Knowing fully well he had handed over the goods imported duty free not only in the case of M/s Shree Rajshri Plastics but also in the case of M/s Sailesh Industries as well, to the same persons as advised by Shri Choksi, and the goods never reached the premises of the said M/s Shree Rajshri Plastics and M/s Sahil Industries. Shri Pragnesh Jain also failed to bring these this to the notice of the Customs Officers, thereby abetting M/s Shree Rajshri Plastics, Shri Rajendra Doshi and Shri Kiran Choksi, in illegally import and diversion of the impugned imported goods under Notification 43/2002 into local market and in the evasion of the aforementioned Customs duty. Because of his omissions and commissions the goods imported under 18 Bills of Entries imported under those Advance Licenses in the name of M/s. Shree Rajshri Plastics, having total Assessable Value of Rs.4,27,42,483/- (as detailed, in Annexure "A' to SCN) became liable for confiscation under Secion 111 of Customs Act, 1962. Therefore, I find Shri Pragnesh Jain liable for penal action under Section 112 (a) of Customs act, 1962 The cited judgment vide filling reply in defence does not find in ratio as the instant case is not dealt under IPC, but under the provisions of the Customs Act, 1962.'

4. Learned Counsel pointed out that, in near identical circumstances, penalties imposed on Shri Pragnesh Jain in connection

with imports effected by M/s Sahil Industries and, having been dropped in adjudication, was not reversed in appeal filed by Commissioner of Customs (EP), Mumbai in final order[2] disposing off appeal[3] against order[4] of Commissioner of Customs (Export Promotion), Mumbai.

5. We find reference to imports by M/s Sahil Industries in the impugned order. In the appeal of Commissioner of Customs (EP), Mumbai, the Tribunal had held

> *'10. As regards penalty to be imposed on Shri Pragnesh Jain under Section 112 of the Customs Act, 1962, the adjudicating authority has recorded the following findings:-*
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> > *"I have carefully considered the arguments put forth by the Advocate representing Shri Pragnesh B. Jain and have also considered the various issues put forth by the notice vide his letter dated 20.1.2004. The main argument of Shri Pragnesh Jain is that the evidence on record does not in any way implicate him in the present case. It was pointed out that as a Custom House Agent, he had not contravened any of the Rules and Regulations and that the key persons involved namely Shri Sawant, Shri Choksi or Shri Vinod Chaudhary have nowhere alleged that he had any knowledge about diversion of the goods imported under the relevant advance licences. It was also pointed out that as a Clearing Agent his job ended with the clearance of the goods and that the subsequent events consequent to the clearance of the alleged goods from the Customs Area is of no relevance, especially, when there is no evidence to implicate the notice in any active involvement in the subsequent diversion of the goods. In this context, Shri Jain has also drawn attention to the definition of "abetment in Section 107 of the Indian Penal Code and has argued that the records of the case does not throw any positive evidence to indicate that he had quoted certain case laws. I have closely examined the above said contentions and arguments of Shri Jain and I have also perused the case laws cited. Evidence on record nowhere brings out the fact that Shri Jain was in any way involved in the activities of the various persons involved in the case. None of the statements recorded indicate any act of omission or commission which could be construed as contravention of the*

[2] [no. A/86900/16/EB dated 1st April 2016]
[3] [C/805/2006]
[4] [order-in-original no. 34/2005/CAC/CC/RJM dated 23rd May 2005]

> *Customs Act, 1962. It is also seen that as a clearing agent, he has filed the various documents given to him by the so called importer and facilitated in clearance of the goods. Further, there is no evidence to indicate that he had knowledge of the ulterior motives of the persons concerned with regard to the diversion of the goods to the domestic market. Based on the evidence on record and after considering the documents put forth by Shri Jain, it is now held that he is not liable for penal action under Section 112 of the Customs Act, 1962."*

> *It can be seen from the above reproduced findings that the adjudicating authority has considered all the evidences on record to drop the proceedings for the penalties imposed on Shri Pragnesh Jain which, in our considered view, are correct and cannot be faulted with.'*

which has relied upon lack of evidence and the contours of 'abetment' to hold that no penalty could be fastened on the appellant herein. The impugned order has assumed that the appellant herein was aware of the diversion of imported goods but we take note that he had only handled the documents and, at no stage, had admitted to handling of the goods for delivery at a place other than as instructed by the importer. There is also no statement implicating the appellant.

6. In these circumstances, we find no reason for the penalty to survive and, accordingly, set aside the impugned order to allow the appeal.

(Order pronounced in the open court on 17/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*