CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. III

Customs Appeal No. 86945 of 2016

(Arising out of Order-in-Appeal No. 09/2016-17, S/26-01/2014-15/Adj(I)/NS-I/JNCH//DRI/MZU/F/17/2012-13dated 12.05.2016 passed by the Commissioner of Customs (Import), Nhava Sheva-I)

Lalit Mange **.....Appellant**
1702, Evita,
Hiranandani Gardens,
Powai, Mumbai 400076.

Versus

Commissioner of Customs, Nhava Sheva **.....Respondent**
Jawaharlal Nehru Custom House, Nhava Sheva,
Navi Mumbai 400 707.

APPEARANCE:

Shri Mihir Mehta, Advocatefor the Appellant
Shri Krishna Azad, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 15.04.2026
Date of Decision: 27.04.2026

FINAL ORDER NO. 85579/2026

PER: P. ANJANI KUMAR

Intelligence gathered by the officers of Directorate of Revenue Intelligence[1] indicated that M/s. Clear & Opaque and M/s. Reds & Blue had indulged in evasion of Customs duty by undervaluation of goods, i.e. wood treatment chemicals, resins, varnishes, lacquers. Investigations and searches were conducted at various places including the residence and office of Lalit Mange[2],Director of M/s. Durga Clearing Pvt. Ltd. Various statements were also recorded. On conclusion of the investigation, a show cause notice was issued to M/s. Clear & Opaque and their partners Pratik Mehta and Faiyz Ahmed Shaikh, M/s. Reds & Blues through

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1. **DRI**
2. **the appellant**

proprietor Shri Obaidur Rehman Sheikh. The show cause notice was also issued proposing to impose penalty on the appellant, Director of the Customs Broker. The proposals in the show cause notice were confirmed by order-in-original dated 12.05.2016. It is reported that the other noticees have settled their case before the Settlement Commission.

2. Shri Mihir Mehta, learned counsel for the appellant submits that the Principal Commissioner of Customs (General) passed an order dated 27.02.2018 against the Customs Broker firm of the appellant and revoked the licence under Customs Brokers Licensing Regulations, 2013 on the very same allegations contained in the impugned show cause notice. The matter had reached this Tribunal who vide final order No. A/87146/2023 dated 10.11.2023 set aside the order to the extent it appropriated the security deposit. Learned counsel submits that the appellant has not contravened any provisions to render himself liable for penalty under Section 112(b) as he has not contravened any provisions of sub–section (d) and (m) of Section 111 of the Customs Act, 1962[3]. The appellant had neither acquired possession of nor was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knew or had reason to believe were liable to confiscation and hence no penalty can be imposed. Learned counsel submits that the impugned order does not specify which of the act rendered the goods liable to confiscation; the activity of Customs Broker in receiving the documents from an intermediary does not result in violation of any provisions under Section 111 of the Act. Learned counsel also pointed out that the main charge of undervaluation has not been proved as held by this Bench in the

3. the Act

proceedings against the Customs Broker. As regards the transportation services provided by the appellant through his another firm as he had no knowledge of undervaluation, the activity of transportation of goods and delivery at the godown of Pratik Mehta, instead of the premises of the importer does not render the goods in itself liable for confiscation. More so, when the charge of undervaluation itself is held to be not proved, the goods cannot be held to be prohibited goods under Section 111(d) of the Act. In this regard, learned counsel relies on the decision of the Kerala High Court in the case of **Proprietor Carmel Exports and Imports** vs. **Commissioner of Customs, Cochin**[4]. Learned counsel, therefore, submitted that the findings of the Commissioner that the goods were imported in violation of FT (D&R) Rules, 1993 and the paragraphs 2.12(a) and 2.9.2 of the Foreign Trade Policy are not sustainable. He relies on the following decisions:-

i) **Final Order No. A/87146/2023 dated 10.11.2023**[5]
ii) **Hamid Fahim Ansari** vs. **Commissioner of Customs (Import), Nhava Sheva**[6]
iii) **Atul D. Sonpal** vs. **Commissioner of Customs (ACC & Import), Mumbai**[7]
iv) **R. Mohandas** vs. **Commissioner of Customs, Cochin**[8]
v) **K.S. Sawant & Co.** vs. **Commissioner of Customs (General), Mumbai**[9]
vi) **Perfect Cargo & Logistics** vs. **Principal Commissioner of Customs (Airport & General), New Delhi**[10]
vii) **Kunal Travels (Cargo)** vs. **CC (I&G), IGI Airport, New Delhi**[11]

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4. 2012 (276) ELT 505 (Ker.)
5. Customs Appeal No. 88496 of 2018
6. 2009 (241) ELT 168 (Bom.)
7. 2012 (275) ELT 248 (T)
8. 2016 (336) ELT 399 (Ker.)
9. 2012 (284) ELT 363 (Tri.-Mumbai)
10. 2021 (376) ELT 649 (Tri.-Del.)
11. 2017 (354) ELT 447 (Del.)

3. Shri Krishna Azad, learned authorised representative reiterates the findings of the impugned order and opposes the submissions of the learned counsel.

4. Heard both sides and perused the records of the case.

5. We find that the Commissioner in the impugned order simply reiterates the proposals in the show cause notice and counters the submissions of the appellant on the point that when the proceedings are settled by the main noticee, the proceedings against the other parties cannot survive. We do not find any reasoning or discussion given by the Commissioner to uphold the contentions of the show cause notice and to come to a conclusion that the appellant has rendered himself liable for penalty.

6. We find that this Bench dealing with the case against the Customs Broker found as follows:

- The Commissioner of Customs had come to the conclusion that the various statements recorded during investigation in terms of the legal provisions of Section 108 of the Act which have been used as evidence against the appellant.
- Customs Broker had declared the description of the imported goods and values in various Bills of Entry for the aforesaid import as given in the invoices supplied. The appellants were not aware of the undervaluation of the imported goods as there was no evidence to the claim of the department. The appellants knew about the undervaluation and further all incriminating documents were recovered only from two persons, namely S/Shri Purav Mehta and Pratik Mehta.

- It is clear that only these two persons, i.e. S/Shri Purav Mehta and Pratik Mehta were alone involved in the undervaluation of the goods.
- Even at the time of clearance of the goods for various importers in the past, the Customs assessing group and the Commissionerate did not find any discrepancy in valuation or any misdeclaration.

7. Thus, we find that this Bench has found that the appellant was not aware of the undervaluation in the impugned imports and the investigation relied only on statements of one or two persons. We are of the considered opinion that when the appellant had no knowledge of the undervaluation, the Commissioner should not have imposed penalty on him under Section 112 of the Act.

8. We further find that the adjudicating authority though confirming the proposed penalty on the appellant based on the statements of persons, did not subject the statements to the rigours of the Section 138B of the Customs Act, 1962. Thus, they cease to have any evidentiary value. It is not the case of the department that search of the appellants premises and that of the Custom Broker firm, of which the appellant is a Director, has yielded any incriminating documents so as to hold against the appellant. We are of the considered opinion that the impugned order fails to justify the imposition of penalty on the appellant by any reasoning and evidence to that effect.

9. Under these circumstances, we find that Revenue has not made out any case for imposition of penalty on the appellant.

10. We find that the order regarding confiscation of security deposit by this Bench in the case of the Customs Broker company of the appellant,

vide order cited above, is nowhere an indication that the appellant has rendered himself liable for penalty under Section 112(a) of the Act.

7. The impugned order, therefore, is not sustainable and is liable to be set aside and is set aside. The appeal is, accordingly, allowed with consequential relief, if any, as per law.

(Order pronounced on **27.04.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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