CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. II

Customs Appeal No. 85695 of 2023

[Arising out of Order-in-Original No. 71/2022-23/CAC/COMMR/CKJ/ADJN(EXP dated 31.01.2023 passed by the Commissioner of Customs (Export), Mumbai-I]

Ajit Jain **.... Appellant**
40-01, EVOQ,
'B' Wing, Lodha Cuffe Parade,
Eastern Freeway, Above Wadala
Truck Terminal, Mumbai 400 037.

Versus

Commissioner of Customs-Mumbai Export-I **.... Respondent**
2nd Floor, New Custom House, Ballard Estate, Mumbai 400 001.

APPEARANCE:

Shri Vipin Jain with Shri Sunil Navandhar, Advocates for the Appellant
Shri Dinesh Nanal, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85797/2026

Date of Hearing: 22.04.2026
Date of Decision: 22.04.2026

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein a penalty has been imposed on the appellant of Rs.20,00,000/- under Section 112 of the Customs Act, 1962.

2. The facts of the case are that the appellant was employed with M/s. KDL Biotech Ltd. (the company) from 01.04.2000 till December 2005 as Director-Finance and Commercial. The company was engaged in the manufacture, sale and exports of various pharmaceutical bulk drugs. The appellant was, however, not on the Board of the said company and the title Director was a mere designation as an employee therein. The responsibilities undertaken by the appellant during the period of his

employment included that till May 2005, the responsibility of arranging finances from banks, financial institutions, supervising cash flows and working capital requirements and other commercial functions. From June 2005 till December 2005, the responsibility was restricted to only dealing with banks and financial institutions, on account of change in management of the company in June 2005. During his period of employment in the company, the Revenue initiated certain investigation regarding the manner of usage of raw materials imported under advance licences by the company. In this regard, the appellant's statements were also recorded by the authorities in the year 2004-05. However, since no action or communication followed for nearly two decades, the appellant was under a bonafide belief that the proceedings had attained closure and did not consider himself concerned with the matter in any manner. However, in 2023 the appellant received the impugned order imposing penalty of Rs.20,00,000/- under Section 112 of the Customs Act, 1962 on the ground that as managing director of the company, he was allegedly at the helm of its affairs, which had illegally diverted duty-free materials imported under advance licences into the domestic market instead of utilizing the same in the manufacture of bulk drugs meant for export. Against the said order, the appellant is before us.

3. Learned counsel appearing on behalf of the appellant submits that a perusal of the impugned order reveals that it proceeds on an incorrect premise that the appellant was the managing director during the impugned period. At the outset, it is submitted that neither the investigation nor the impugned order has in any manner established or corroborated the said finding. On the contrary, the impugned order is founded entirely on statements of certain individuals and even assuming *arguendo* that reliance on such statements is justified, none of the said statements assert that the appellant was the managing director of the company. The impugned finding is thus wholly contrary to the facts, which is further borne out by the appellant's statement recorded on 13.12.2004 which is as under:-

> *"….. that he was reporting to their Directors namely Nalin Bamzai, who was settled in USA; that all other Indian Directors were professional Directors and they did not look after the day-to-day activities of the company;'*

It is further submitted that the appellant was employed as Director-Commercial and Finance and the same has been recorded in the impugned order. Thus, the subsequent observations in the impugned order that the appellant in his capacity as the Managing Director was responsible for the activities of the company are not correct. The learned counsel further submitted without prejudice, in any case, the findings of the impugned order of the appellant's role in the alleged illegal diversion of the duty-free raw materials imported under advance licences into the domestic market is merely based on two individual statements recorded of those employed with M/s. Jupiter Dye Chem Ltd. and M/s. Traxpro Trading Co., the alleged sellers/buyers of the raw materials imported duty-free by the company. It is submitted that these statements not having been subjected to cross-examination, are inadmissible and cannot form the basis for imposing penalty. He further submitted that it is nobody's case that the appellant has in any manner personally gained anything from the alleged illegal activities of the company and the statement of the appellant clearly demonstrates the bonafide understanding of the appellant that once the export obligation under an advance licence is complete, the raw materials sourced thereunder can be sold. Therefore, no penalty is imposable on the appellant.

4. On the other hand, learned AR opposed the contentions of the appellant and submits that the appellant was the overall in-charge of day-to-day activities and personally issued delivery order requests of the diverted goods. The use of the suffix 'D' on the invoices was a deliberate act of misdeclaration to bypass actual user conditions proving a clear intent to defraud the Government. As the Managing Director supervising imports and exports, the appellant was legally bound to ensure compliance with advance licence conditions. Therefore, he prayed that penalty has been rightly imposed on the appellant.

5. Heard the parties and considered the submissions. We find that the sole basis for imposing penalty on the appellant is on the premise that the appellant was managing director of the company whereas the appellant was not dealing with the day-to-day activities of the company and was employed as director-finance and commercial. The statements relied to

impose penalty on the appellant have not been examined in terms of Section 138B of the Customs Act, 1962. In that circumstances, the basis for imposing penalty is not sustainable in the eyes of law. Accordingly, the penalty imposed on the appellant is set aside.

6. In the result, the appeal is allowed with consequential relief, if any.

(Order pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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