# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

## NEW DELHI

PRINCIPAL BENCH- COURT NO. I

## Customs Appeal No. 52749 of 2019

(Arising out of Order-in-Original No. 06/COMMR/CUS/IND/2019-20 dated 31.07.2019 passed by the Commissioner of Customs, Indore)

**M/s. Rathi Iron & Steel Ind. Ltd.,** **...Appellant**
Sector III, Industrial Area,
Pithampur

VERSUS

**The Commissioner of Customs,** **...Respondent**
**CGST, Central Excise & Customs**
Manik Bagh Palace, Indore

**APPEARANCE:**

Ms. Surbhi Sinha, Advocate for the appellant.

Shri Ajay Jain, Special Counsel for the Department

**CORAM:**

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

**Date of Hearing: 28.01.2026**
**Date of Decision: 19.05.2026**

**FINAL ORDER NO. 509352026**

**JUSTICE DILIP GUPTA:**

M/s. Rathi Iron & Steel Ind. Ltd.[1] has filed this appeal to assail that portion of the order dated 31.07.2019 passed by the Commissioner that imposes a penalty of Rs. 10 lacs upon the appellant under section 112(b) of the Customs Act, 1962[2].

2. The appellant is an incorporated company engaged in the manufacture of M.S. Bars and Rods. At the relevant time, the appellant

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1. **the appellant**
2. **the Customs Act**

was registered with the Central Excise Department, Division Pithampur. Subsequently, the appellant merged with M/s. Jaideep Ispat & Alloys Pvt. Ltd.

3. An investigation was initiated by the Directorate General of Central Excise Intelligence[3], Regional Unit, Indore against M/s. New Tech Abrasives Ltd., SEZ, Pithampur[4], alleging clandestine removal of M.S. Ingots from the Special Economic Zone[5] without permission of the Customs authorities and without payment of customs duty.

4. Pursuant to the said information, searches were conducted on 23.11.2009 at various premises connected with NTAL. Certain documents, computer data, and private records were allegedly recovered from the premises of NTAL and from the residence of one of its employees.

5. During the course of investigation, statements of certain transporters and buyers were recorded. It was alleged that vehicles carrying M.S. Ingots were cleared from the SEZ during night hours and goods were unloaded at the premises of certain entities including Anant Steel, Shivangi Steel, Sarvashree Industries and the appellant.

6. Based on the said investigation, a show cause notice dated 24.08.2012 was issued to NTAL and various other parties proposing demand of duty and imposition of penalties. The appellant was arrayed as a noticee on the allegation that it had purchased M.S. Ingots clandestinely removed by NTAL without payment of customs duty and was, therefore, liable to penalty under section 112(b) of the Customs Act. The show cause notice does not allege any specific quantity, value,

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**3. DGCEI**
**4. NTAL**
**5. SEZ**

or date of alleged purchase by the appellant. Statement of Director, officers, or employees of the appellant were not recorded. No document, ledger, invoice, transport record, or incriminating material were recovered from the premises of the appellant.

7. The appellant filed a detailed reply to the show cause notice on 21.01.2014 categorically denying the allegations and pointed out that it had never purchased any M.S. Ingots from NTAL and that the allegations were based solely on conjectures and third-party statements.

8. The Commissioner, however, by the impugned order dated 31.07.2019, imposed a penalty of Rs. 10,00,000/- on the appellant under section 112(b) of the Customs Act.

9. Ms. Surbhi Sinha, learned counsel for the appellant made the following submissions:

**(i)** The entire case against the appellant is based solely on vague and general statements of three transporters made under section 108 of the Customs Act, wherein the name of the appellant is casually mentioned along with several other entities. These statements are identical in nature, appear to be dictated, and wholly uncorroborated. These statements cannot also be relied upon as the procedure contemplated under section 138B of the Customs Act was not followed;

**(ii)** No statement of the appellant or its Directors/employees was recorded. No documentary evidence was recovered from the premises of the appellant. The name of the

appellant does not even appear in the list of confirmed buyers referred to in the show cause notice;

**(iii)** Section 112(b) of the Customs Act can be invoked only when a person is found to have acquired possession of, or is otherwise physically concerned in carrying, removing, selling, purchasing, or dealing with goods which he knows or has reason to believe are liable to confiscation under section 111. In the present case, there is no evidence to establish that the appellant ever physically dealt with the alleged goods. There is also no evidence of knowledge or mens rea on the part of the appellant; and

**(iv)** The show cause notice does not propose confiscation of goods under section 111 of the Customs Act. It is a settled legal principle that penalty under section 112 of the Customs Act cannot be imposed unless the goods are liable to confiscation.

10. Shri Ajay Jain, learned special counsel appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal. Learned special counsel also submitted that penalties under section 112(b) of the Customs Act have been correctly levied upon the appellant.

11. The submissions advanced by the learned counsel for the appellants and the learned special counsel appearing for the department have been considered.

12. The issue that arises for consideration is whether the statements made by the three transporters under section 108 of the Customs Act could be considered as relevant because it is on the basis of these statements that it has been alleged that the appellant had purchased M.S. Ingots removed by NTAL in a clandestine manner.

13. Neither the show cause notice nor the impugned order mention that the procedure contemplated under section 138B of the Customs Act was followed. The statements made under section 108 of the Customs Act can be considered as relevant only if the procedure contemplated under section 138B of the Customs Act had been followed as was held by the Tribunal in **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[6].

14. Penalty under section 112(b) of the Customs Act could not have been imposed upon the appellant as for imposing penalty two conditions are required to be followed namely:

(i) Acquiring possession or being in anyway concerned or dealing with any goods that are liable for confiscation; and

(ii) Knowledge or belief about such goods being liable for confiscation.

15. The aforesaid two conditions are not satisfied in the present case. The appellant had not dealt with the goods that may be liable to confiscation and nor is there anything to show that the appellant had knowledge or belief that such goods were liable for confiscation. The impugned order also does not provide any basis to assume that the

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**6. Excise Appeal No. 51148 of 2020 decided on 01.04.2025**

appellant had any knowledge that the goods are liable to confiscation under section 111 of the Customs Act.

16. Thus, in the absence of knowledge or belief that such goods are liable to confiscation under section 111 of the Customs Act, penalty under section 112(b) of the Customs Act could not have been imposed upon the appellant.

17. The impugned order dated 31.07.2019 in so far as it concerns the appellant is, accordingly, set aside and the appeal is allowed.

(Order pronounced on **19.05.2026**)

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

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