CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 52747 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)

Metal Forger and Fabricators **...Appellant**
51/A, Industrial Area, Maxi Road,
Ujjain- 456010 (M.P.)

VERSUS

Commissioner of Customs, Indore **...Respondent**
Manik Bagh Palace, Post Bag No. 10,
Indore-452001 (M.P.)

AND

Customs Appeal No. 52748 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)

Metal Kraft Engineers **...Appellant**
5/A, Industrial Area, Maxi Road,
Ujjain- 456001 (Madhya Pradesh)

VERSUS

Commissioner of Customs, Indore **...Respondent**
Manik Bagh Palace, Post Bag No. 10,
Indore-452001

APPEARANCE:

Shri B.L. Narasimhan, and Shri Kaushal Jaisalmeria, Advocates 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's. 50936-50937/2026

JUSTICE DILIP GUPTA:

Customs Appeal No. 52747 of 2019 has been filed by the Metal Forger and Fabricators to assail that portion of the order dated 31.07.2019 passed by the Commissioner of Customs, Indore[1] that imposes a penalty of Rs. 10 lacs upon it under section 112(b) of the Customs Act 1962[2].

2. **Customs Appeal No. 52748 of 2019** has been filed by the Metal Kraft Engineers to assail that portion of the order dated 31.07.2019 passed by the Commissioner that imposes a penalty of Rs. 10 lacs upon it under section 112(b) of the Customs Act.

3. Metal Forger and Fabricators and Metal Kraft Engineers shall be referred to as the appellants.

4. The appellants are engaged in the manufacture and fabrication of automobile components & parts of agricultural equipments such as submersible pumps. During the period from 2008-09, the appellants supplied fabricated columns, pre-engineered shed trusses, gentry, foundation plates, scaffolding, mould stand and MS scrap to M/s New Tech Abrasive Ltd[3]. The dispatch of such goods was made under ARE-1 certificates since NTAL was located in the Indore Special Economic Zone at Sector III, Pithampur. Except for sale of the abovementioned goods, which is recorded in its books of accounts, the appellants claim that they did not supply any other goods to NTAL or purchase any other goods from NTAL.

5. Intelligence was received by the Directorate General of Central Excise Intelligence, Regional Unit, Indore[4] that NTAL had clandestinely

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1. **the Commissioner**
2. **the Customs Act**
3. **NTAL**
4. **DGCEI**

removed M.S. Ingots[5] from its factory at SEZ, Indore without seeking permission or informing the jurisdictional Customs Officers and without payment of applicable customs duty. Pursuant to the same, search was conducted and certain documents/information were seized from NTAL premises/factory. The officers from DGCEI also recorded the statement of Shri Nitin Bhide, Manager of the appellant on 19.07.2011 under section 108 of the Customs Act.

6. A show cause notice dated 24.08.2012 was thereafter issued directing the appellants to show cause as to why penalty should not be imposed on then under section 112 (b) of the Customs Act on the ground that the appellants had purchased the goods which were clandestinely removed by NTAL without payment of applicable customs duty.

7. In response to the show cause notice, the appellants filed multiple letters requesting for supply of the relied upon documents. The appellants also filed submissions contesting the allegations made in the show cause notice. By letters dated 25.09.2012 and 20.09.2012 the appellants pointed out that the show cause notice was received without any appendix. It was also clarified that there were no purchase transactions of ingots/gits/shots or any other goods between the appellants and NTAL.

8. By a letter dated 19.09.2013, the appellants once again requested the Commissioner to provide copies of the relied upon documents that had not been received with the show cause notice.

9. Pursuant to the request of the appellants, the statement of Nitin Bhide was provided by the department. Several of the relied upon

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5. the goods

documents were, however, not provided to the appellants. On going through the statement of Nitin Bhide recorded by the DGCEI officials and the allegations made in the show cause notice, the appellants realized that the DGCEI had attempted to create an impression that Nitin Bhide had submitted ledger accounts of NTAL from the books of the appellants and accepted the transactions of purchase of the goods by the appellants from NTAL.

10. In order to remove any confusion, Nitin Bhide filed an affidavit dated 20.09.2013 wherein he clarified that he had neither submitted the ledger copy of NTAL nor admitted that the goods had been purchased from NTAL. He also clarified that his statement dated 19.07.2011 was obtained by the officers under duress and it was dictated in such a distorted manner that it seemed that he had admitted the correctness of the ledger. He further stated that he had merely confirmed seeing the copy of the alleged ledger from books of NTAL after they were shown to him by the DGCEI officials.

11. In the replies and additional submissions, the appellants also submitted that there were no purchase transactions of the goods or any other goods between the appellants and NTAL and the appellants were not engaged in the business of trading of ingots/gits/shots, but were engaged in the manufacture and fabrication of automobile components & parts of agricultural equipment such as submersible pumps which is evident from the monthly returns they were regularly filing. It was also pointed out that the appellants had not purchased goods without payment of duty, and neither had they acquired possession, nor in any manner were they concerned with carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing any goods which

they had the knowledge or reason to believe had been improperly imported. It was also pointed out that the copy of the ledger shown to Bhide was maintained by NTAL and was seized from the premise of a third party and not from the premise of the appellants. Ledger copy maintained by NTAL matches with the other documents seized from the premises of NTAL only and not with other independent evidences. Thus, in the absence of any other independent corroborative evidence, the third-party records could not be made a ground to impose penalty on the appellants.

12. However, the Commissioner by order dated 31.07.2019 imposed penalty of Rs. 10,00,000/- on each of the appellants under section 112(b) of the Customs Act. The penalty has been imposed on the ground that the appellants had purchased the goods which were clandestinely removed by NTAL without payment of customs duty and thereby, acts, omissions and abetment had rendered them liable for penalty under section 112(b) of the Customs Act. The relevant portion of the order is reproduced below:

> "M/s Anant Steel Ltd., Shri Rahul Gupta, Shri Kamal Rathi, M/s. Rathi Iron & Steel, M/s. Metal Forger and Fabricators, M/s Metalcraft Engineers, M/s Neesa Infrastructure, M/s Sarveshree Industries (its then Director Shri Gurmeet Singh and Leasee Shri Abhay Gupta) have purchased the MS ingots clandestinely removed by M/s NTAL in huge quantity as detailed in foregoing paragraph without payment of customs duty and thereby their above acts, omissions and abetments, they all have rendered themselves liable for penalty under Section 112(b) of the Customs Act, 1962. Held accordingly."

13. These two appeals have been filed to assail the order dated 31.07.2019 that is against the appellants.

14. Shri B.L. Narasimhan, learned counsel for the appellants assisted by Shri Kaushal Jaisalmeria made the following submissions:

(i) The impugned order has been passed without appreciating the correct factual position;

(ii) No penalty can be imposed on the appellants under section 112(b) of the Customs Act; and

(iii) The impugned order has been passed in gross violation of principles of natural justice.

15. 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 these two appeals. Learned special counsel also submitted that penalties under section 112(b) of the Customs Act were correctly imposed on the appellants and that the principles of natural justice had not been violated.

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

17. Penalty has been imposed on the appellants on the ground that they had purchased non-duty paid goods from NTAL. The appellants in there replies had categorically clarified that they had merely sold some fabrication material and M.S. Scrap to NTAL against A.R.E.-1 Certificates which were duly acknowledged by the Customs Officers posted at SEZ, Pithampur. The appellants also clarified that they were not traders, but manufacturers of automobile components and parts of agricultural equipments. They clarified that except for the above-mentioned sale of

fabricated material which was also recorded in the books of appellants, there was no other sale/purchase transaction with NTAL and that for manufacturing and fabrication work, M.S. Ingots are not even used as an input. To support this fact appellants produced the general purchase ledger for the year 2008-09 and copies of the bank statement. Ledger of NTAL in the books of the appellants and copy of A.R.E.-1 certificate towards clearance of goods to NTAL were also submitted.

18. The impugned order, however, does not consider these facts and has only relied upon the records maintained by NTAL to prove that the goods were purchased by the appellants from NTAL. For this purpose, reliance has been placed on the statement of Nitin Bhide made under section 108 of the Customs Act, which statement could not have been relied upon as the procedure contemplated under section 138B of the Customs Act had not been followed. This is what was also held by the Tribunal in **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[6].

19. Penalty, therefore, under section 112(b) of the Customs Act could not have been imposed upon the appellants 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.

20. The aforesaid two conditions are not satisfied in the present case. The appellants had not purchased/imported the goods from NTAL and, therefore, the appellants are in no way dealing, acquiring, removing or

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

depositing non-duty paid goods. This apart, as the appellants had not purchased the goods from NTAL, there is no occasion for them having knowledge of such goods being liable to confiscation. The impugned order also does not provide any basis to assume that the appellants had any knowledge that the goods were liable to confiscation under section 111(m) of the Customs Act.

21. Thus, in the absence of knowledge or belief that such goods were liable to confiscation under section 111 of the Customs Act, penalty could not have been imposed upon the appellants.

22. In such circumstances, the impugned order dated 31.07.2019 so far as it imposes penalties upon the appellants under section 112(b) of the Customs Act cannot be sustained and is set aside. The two Customs Appeals are, accordingly, allowed.

(Order pronounced on **19.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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