CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 52706 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)

Shri Siddharth Jain, **...Appellant**
71, Jain Colony,
Ratlam, (M.P.)- 457001

VERSUS

Commissioner of Customs, **...Respondent**
CGST & Central Excise,
Ujjain (M.P.)

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. 50939/2026

JUSTICE DILIP GUPTA:

Siddharth Jain[1] has filed this appeal to assail that portion of the order dated 31.07.2019 passed by the Commissioner of Customs, Indore[2] that confirms demand of customs duty under the proviso to section 28(1) of the Customs Act 1962[3] with interest. The order also confiscates the goods under section 113 of the Customs Act and

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

imposes penalties upon the appellant under sections 114 and 114AA of the Customs Act.

2. The appellant is the proprietor of M/s. Manglam Steel, Ratlam and is engaged in the trading of various goods. M/s. New Tech Abrasive Ltd.[4] has a factory in the Indore Special Economic Zone[5], and is engaged in manufacturing of MS Ingots and shots/Grills falling.

3. A show cause notice dated 24.08.2012 was issued to NTAL alleging that they had clandestinely removed M.S. Ingots from their factory at SEZ, without payment of customs duty and that the appellant had supplied 991.391 M.T. of MS Scrap to NTAL at the SEZ factory clandestinely without payment of customs duty and received the payment mostly in cash only. For this allegation the department has relied on the seized documents i.e. ledger seized from the room of Ganpat Singh, Machine Operator of New Tech Pipe Ltd. and on the basis of the print out taken out as per panchnama dated 29.11.2010 from the computer seized from the factory of NTAL. A demand of customs duty of Rs. 72,11,515/- under the proviso to section 28 (1) of the Customs Act and penalty under section 114 and penalty under section 114AA of the Customs Act, 1962 was proposed against the appellant.

4. The appellant, in reply to the show cause notice, stated that he had not supplied MS Scrap to M/s. NTAL and said allegation was made without there being any evidence. Thus, the demand of customs duty was liable to be dropped.

5. The Commissioner, by order dated 31.07.2019, confirmed the demand of customs duty of Rs. 72,11,515/- with penalty of Rs.

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4. NTAL
5. SEZ

72,11,515/- under section 114 and penalty of Rs. 72,11,515/-under section 114AA of the Customs Act.

6. This appeal has been filed to assail the said order 31.07.2019 on the following.

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

(i) The allegation of clandestine clearance of MS Scrap to NTAL has been made on assumptions and presumptions as the investigation agency did not adduce any evidence as to how such huge quantity of 1986.366 MT of MS Scrap was supplied by the appellant to NTAL, which is located within the Indore SEZ Premises;

(ii) The records also do not show the manner in which cash was received by the appellant;

(iii) Not a single piece of evidence has been recovered from the appellant regarding the supply of MS Scrap to NTAL. The department has also not adduced any evidence regarding the procurement of huge quantity of 1986.366 MT of MS Scrap by the appellant as no investigation was made from the buyers from whom appellant may have purchased the MS Scrap;

(iv) The department has relied upon the records of ledger found from the room of Ganpat Singh, Machine Operator of NTAL and pages seized from the computer of the NTAL which are third party records and cannot be relied upon by the department in the absence of any independent evidence;

(v) In cases of clandestine removal of goods, onus is on the department to prove that appellant has clandestinely supplied the MS scrap to NTAL which has not been discharged by the department in the present case;

(vi) The alleged supply of MS scrap by the appellant to NTAL, which a SEZ unit, comes under the category of export of goods under the SEZ Act, 2005, which is exempted from the payment of customs duty;

(vii) The demand of customs duty is not maintainable. Thus, penalties under sections 114 and 114AA of the Customs Act is liable to be set aside; and

(viii) The impugned order has been passed beyond the scope of the show cause notice as penalty of Rs. 72,11,515/- under section 114AA of the Customs Act has been confirmed against the appellant, whereas the show cause notice does not proposes any penalty under section 114AA of the Customs Act.

8. 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 114 and 114AA of the Customs Act were correctly imposed on the appellant and that there was sufficient evidence on record to establish that the appellant had supplied MS Scrap to NTAL in a clandestine manner without payment of customs duty.

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

10. The first issue that arises for consideration is whether the appellant was liable to pay any customs duty, even if it is assumed that the appellant has supplied MS Scrap to NTAL, which has a factory at SEZ. This issue was examined by a Division Bench of this Tribunal in **Cummins Turbo Technology** vs. **Commissioner of Customs, Central Excise & Central Tax, Indore**[6]. After examining the provisions of the Special Economic Zones Act[7] and the SEZ Rules. The Division Bench held as follows:

> "**31.** The charging sections, having been overridden by the SEZ Act, no legal authority to levy and collect central excise duty, customs duty or service tax for goods or services supplied for authorised operations of SEZ developers and units covered by section 26 remains. Without such a legal authority, no tax or duty can be either levied or collected in view of article 265 of the Constitution of India."

11. It is not the case of the department in the show cause notice that the goods were not supplied for authorised operations in the SEZ Unit. Thus, the appellant was not liable to pay any duty on the goods supplied to a SEZ unit. In this view of the matter, the confirmation of demand of duty from the appellant is without authority of law. Interest, therefore, could not have been charged from the appellant on the duty amount that was confirmed.

12. It would, therefore, not be necessary to examine whether the appellant had actually supplied MS Scrap to NTAL.

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6. (2023) 12 Centax 334 (Tri.-Del)
7. SEZ Act

13. Penalty under section 114 of the Customs Act is imposed for the reasons that the appellant had evaded payment of duty. As it has been held that the appellant had not evaded payment of duty, penalty under section 114 of the Customs Act could not have been levied upon the appellant.

14. The contention of learned counsel for the appellant that penalty under section 114AA of the Customs Act could not have been imposed upon the appellant as the show cause notice did not call upon the appellant to show cause why penalty under section 114AA of the Customs Act could not be imposed upon the appellant, therefore, deserves to be accepted.

15. Thus, for all the reasons stated above, the impugned order dated 31.07.2019 passed by the Commissioner in so far as it concerns the appellant is 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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