CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 52745 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 Kamal Rathi, **...Appellant**
82-Kailash Park Colony,
Indore, (M. P.)

VERSUS

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

APPEARANCE:

Ms. Priyanka Goel, 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. 50938/2026

JUSTICE DILIP GUPTA:

Shri Kamal Rathi [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 him under section 112(b) of the Customs Act 1962[2].

2. The appellant claims to be an individual engaged in the business of commission agency and in real estate activities as a property broker. The

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

appellant claims that he is not engaged in any trading activity, nor had physically handled, stored, transported or dealt with any goods at any point of time.

3. Information was received by the Directorate General of Central Excise Intelligence[3] that M/s New Tech Abrasives Ltd., SEZ, Sector-III, Pithampur[4] had clandestinely removed substantial quantities of M.S. Ingots from their SEZ unit without permission or intimation to the jurisdictional Customs authorities and without payment of applicable customs duty.

4. On the basis of the said information, officers of DGCEI, RU, Indore, conducted simultaneous searches on 23.11.2009.

5. From the residential premises of Ganpat Singh, Machine Operator of NTAL, various challans, invoices and gate passes allegedly used for clandestine removal of goods by NTAL were recovered and seized under a Panchnama dated 23.11.2009.

6. Ledger Serial No. 172, seized from the premises of Ganpat Singh and annexed as Annexure-A to the Panchnama dated 23.11.2009, along with computer print-outs taken under Panchnama dated 29.11.2010, contained entries reflecting certain transactions in the name of the appellant at pages 77, 78 and 79, including alleged cash payments and transactions of sale and purchase. On this basis, the appellant was summoned and his statement was recorded under section 108 of the Customs Act on 06.06.2011.

7. In his statement, the appellant stated, inter alia, that he was working as a commission agent in sponge iron and scrap for the past

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3. DGCEI
4. NTAL

three years and was also engaged in real estate brokerage in his own name. He stated that he was acquainted with NTAL through Hemant Sharma, Director of NTAL, and that he had facilitated supply of sponge iron and scrap on commission basis at rates ranging from Rs. 15 to Rs. 50 per MT. He clarified that the scrap and sponge iron were procured from traders/suppliers and supplied to NTAL and that payments for such transactions were made directly to the suppliers, and that his role was limited only to facilitation, for which he received commission in certain transactions. The appellant further clarified that although certain ledger entries bore his name, the actual receipts and payments were made between the concerned parties, and his name was mentioned only because the transactions were negotiated through him. He also stated that for several entries reflected in the ledger, he had not received any commission at all. The statement also records that the appellant had perused pages 77 to 79 of the said ledger and signed the same in token of having seen the entries.

8. On the basis of the above, the Department alleged that the appellant had accepted the contents of the seized documents and that the same established the sale of ingots by NTAL and purchase of scrap/sponge iron through the appellant.

9. A show cause notice dated 24.08.2012 was issued to the appellant proposing imposition of penalty under section 112(b) of the Customs Act.

10. The appellant filed a detailed reply to the show cause notice and categorically submitted that he was merely a commission agent and had never physically dealt with or handled any goods, and that he had no role in any alleged contravention. It was specifically contended that mere

facilitation between two parties could not attract penalty under the Customs Act.

11. The Commissioner, however, confirmed a penalty of Rs. 10,00,000/- on the appellant under section 112(b) of the Customs Act.

12. Ms. Priyanka Goel, learned counsel for the appellant made the following submissions:

(i) The impugned order has placed reliance upon the statement of the appellant recorded under section 108 of the Customs Act. This statement cannot be considered as relevant as the procedure contemplated under section 108 of the Customs Act was not followed;

(ii) The entire allegation against the appellant is founded solely on certain ledger entries and computer print-outs of NTAL, allegedly seized from the residential premises of Ganpat Singh, an employee of NTAL. No document, record or incriminating material were seized from the premises of the appellant. The allegation of clandestine purchase or dealing against the appellant is thus based on third-party records, which neither belong to the appellant nor were maintained by him. Such records, in the absence of independent corroboration, cannot form the sole basis for imposition of penalty under section 112(b) of the Customs Act;

(iii) It is a settled position of law that penal provisions under section 112(b) of the Customs Act can be invoked only when there is clear, cogent and specific evidence demonstrating conscious knowledge, involvement or abetment in respect of the offending

goods. In the present case, the allegation against the appellant is completely bereft of particulars, rendering the very foundation of the charge legally untenable;

(iv) The alleged purchase of M.S. Ingots, sought to be fastened upon the appellant solely on the basis of unverified records of NTAL, is based on assumption and presumption. Not a single piece of documentary evidence has been produced to demonstrate that the appellant had purchased M.S. Ingots, clandestinely or otherwise;

(v) Penalty under section 112(b) of the Customs Act could not be fastened upon the appellant as the requirements of the said section was not satisfied; and

(vi) The department failed to produce any evidence of flow of consideration, whether in cash or otherwise.

13. 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 penalty under section 112(b) of the Customs Act was correctly imposed on the appellant as he had purchased the goods produced by NTAL in a clandestine manner.

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

15. The first issue that arises for consideration is whether the statement made under section 108 of the Customs Act could have been

relied upon if the procedure contemplated under section 138B of the Customs Act was not followed.

16. In the instant case, there is nothing on the record to show that the procedure contemplated under section 138B of the Customs Act was followed.

17. Thus, the statement made under section 108 of the Customs Act could not have been relied upon. This is also what was observed by the Tribunal in **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[5].

18. The impugned order places reliance upon certain ledger entries and computer print-outs of NTAL. These are records of third-party, which neither belong to the appellant nor were maintained by him. These records, in the absence of any independent corroboration, cannot form the basis for imposition of penalty under section 112(b) of the Customs Act.

19. 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.

20. The aforesaid two conditions are not satisfied in the present case. The appellant had not dealt with the goods that are liable to confiscation and nor is there anything to show that the appellant had knowledge or

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

belief that such goods were liable to confiscation. The impugned order also does not provide any basis to assume that the appellant had any knowledge that the goods are liable to confiscation under section 111 of the Customs Act.

21. 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.

22. 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 deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **19.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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