CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 52951 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. Anant Steel Pvt. Ltd., **...Appellant**
Sector III, Pithampur,

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. 50934/2026

JUSTICE DILIP GUPTA:

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

2. The appellant is a incorporated and registered as a company. It is engaged in the manufacture of M.S. Bars and Rods.

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1. the appellant
2. the Customs Act

3. The Directorate General of Central Excise Intelligence[3], Regional Unit, Indore, received certain intelligence alleging that M/s New Tech Abrasives Ltd., SEZ, Sector III, Pithampur[4] had clandestinely removed large quantities of M.S. Ingots, from its SEZ unit without obtaining permission or giving intimation to the jurisdictional Customs authorities and without payment of customs duty.

4. Upon scrutiny of the seized documents, particularly the ledger and cash book recovered from the premises of Ganpat Singh, Machine Operator of NTAL under Panchnama dated 23.11.2009, the department alleged that NTAL clandestinely removed M.S. Ingots without payment of customs duty and sold the same to the appellant and Kamal Rathi. As per entries recorded at serial no. 172 of the seized ledger, NTAL is alleged to have cleared 952.67 MT of M.S. Ingots to the appellant during the period 08.03.2008 to 18.07.2008, against which an amount of Rs. 2,96,99,567/- was allegedly received in cash, with corresponding cross-entries reflected in the seized cash book at serial no. 173.

5. On 04.12.2009, officers of the DGCEI conducted searches at the factory and office premises of the appellant at Pithampur and Indore. During physical verification of stock at the factory, excess quantity of 27.865 MT of M.S. Ingots, valued at Rs. 5,89,539/-, was found over and above the recorded balance. Treating the said excess stock as unaccounted, the department seized the same under a Panchnama dated 04.12.2009 on the allegation that it was intentionally kept unrecorded with an intent to use it for clandestine manufacture and

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3. DGCEI
4. NTAL

clearance, rendering it liable to confiscation under rule 25(1) of the Central Excise Rules, 2002[5].

6. Confirmations were obtained from certain transporters, wherein three transporters/vehicle owners, in their respective statements, deposed that the vehicles were allegedly cleared from the SEZ gate under the escort of personnel of the factory, on invoices purportedly prepared by factory staff during night hours, and that the said goods were allegedly unloaded at the premises of the appellant, M/s Shivangi Steel, M/s Sarvshree (Ghatabillod), and M/s Rathi Iron & Steel.

7. A show cause notice dated 27.05.2010 was issued to the appellant, proposing imposition of penalty under section 112(b) of the Customs Act on the allegation that the appellant had, by alleged acts, omissions, and commissions as set out therein, rendered himself liable to penal action under the said provision.

8. The appellant submitted a detailed reply dated 19.12.2016 and specifically contended that there existed no evidence whatsoever to establish any purchase of goods by the appellant. It was categorically asserted that the appellant had never purchased M.S. Ingots from NTAL. The appellant further submitted that, in the absence of any documentary, physical, or corroborative evidence demonstrating purchase, receipt, possession, or dealing in the alleged goods, the appellant could not be held to be concerned with or connected with the contravened goods. Accordingly, it was contended that no penal liability could be fastened upon the appellant under section 112(b) of the Customs Act.

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5. the Central Excise Rules

9. It is against the imposition of penalty under section 112(b) of the Customs Act that this appeal has been filed.

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

(i) The case of the department is based on the statement of three importers made under section 108 of the Customs Act. As the procedure contemplated under section 138B of the Customs Act was not followed, the statements cannot be considered as relevant;

(ii) The allegation against the appellant is founded solely on third-party documents allegedly recovered during the search conducted at the premises of NTAL, namely a rough private ledger seized from the room of one Ganpat and certain computer printouts. On the basis of these documents, the department has merely presumed that NTAL had clandestinely removed goods to various parties, including the appellant. No independent or corroborative evidence has been produced to establish any purchase, receipt or dealing in such goods by the appellant;

(iii) No incriminating evidence was recovered from the premises of the appellant. The officers visited the factory of the appellant on 04.12.2009, verified the stock, and scrutinised records but not a single document evidencing purchase of goods from NTAL was found. The stock of finished goods tallied with the RG-1 register, and even the alleged excess stock of raw material is the subject matter of a separate show cause notice dated 27.05.2010 which has no nexus with the present

proceedings and was never linked to any alleged purchase from NTAL;

(iv) The appellant denied having purchased any goods from NTAL and produced its purchase ledger accounts for the period 2007-08 to 2009-10, which conclusively demonstrate that no such transactions ever took place. These records have neither been disputed nor rebutted by the department with any contrary evidence;

(v) It is a settled principle of law that allegations of clandestine purchase or dealing cannot be sustained merely on the basis of third-party records or uncorroborated statements, especially when no evidence is recovered from the premises of the appellant; and

(vi) The adjudicating authority has relied upon these computer printouts and private records purportedly recovered from third-party premises without complying with the mandatory requirements of section 138C of the Customs Act;

(vii) The Commissioner gravely erred in imposing a penalty of Rs. 10 lacs on the appellant under section 112(b) of the Customs Act without establishing the mandatory and foundational requirements prescribed under the said provision; and

(viii) It has been consistently held that penalty under section 112(b) of the Customs Act cannot be imposed unless the Department discharges the burden of proving conscious involvement and knowledge, which burden has not been discharged in the present case.

11. 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 submitted that there was enough evidence to show that the appellant had received goods from NTAL in a clandestine manner.

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

13. The impugned order has placed reliance upon the statement made under section 108 of the Customs Act. It has, therefore, to be examined 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. 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. Thus, statements recorded 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**[6].

14. The impugned order has placed 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.

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

15. Penalty under section 112(b) of the Customs Act could not also 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.

16. 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 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.

17. 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 also not have been imposed upon the appellant.

18. 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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