CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 50203 of 2020

(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 Rahul Gupta, **...Appellant**
198- Tilak Nagar,
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. 50932/2026

JUSTICE DILIP GUPTA:

Rahul Gupta[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 imposes a penalty of Rs. 10 lacs upon him under section 112(b) of the Customs Act 1962[3].

2. The appellant claims that he is an individual salaried person, employed in a private firm, and not engaged in any trading,

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

manufacturing, or commercial business activity. The appellant further claim that during the course of his employment he happened to come into contact with an employee of M/s New Tech Abrasives Ltd.[4], the main noticee and that he had merely introduced certain prospective buyers to the said employee and had no role in procurement, storage, transportation, or handling of any goods.

3. The Directorate General of Central Excise Intelligence[5], Regional Unit, Indore, received information that NTAL had clandestinely removed huge quantities of M.S. Ingots, valued from its SEZ unit without due permission or intimation to the jurisdictional Customs authorities and without payment of applicable customs duty.

4. Acting on the said information, officers of DGCEI, conducted simultaneous searches on 23.11.2009. According to the department during the course of searches, various documents and electronic data allegedly evidencing evasion of customs duty were recovered and seized under Panchnamas dated 23.11.2009.

5. The statement of the appellant was recorded on 30.06.2011 under section 108 of the Customs Act by the Senior Intelligence Officer, DGCEI. It is alleged that the appellant had stated that he had arranged sale of certain consignments of ingots manufactured by NTAL on a commission basis till November–December 2008 and had received commission of Rs. 75 per MT in cash. It is further alleged that the goods were delivered at Pithampur and Ghatabillod to M/s Anant Steel and M/s Sarveshree Industries, through vehicles arranged by employees of NTAL. It is also alleged that the appellant confirmed on perusal of a red-

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4. NTAL
5. DGCEI

coloured notebook (ledger) seized from the premises of Ganpat Singh that certain transactions recorded therein pertained to sales arranged by him on commission basis, though payments were allegedly made directly by Dinesh Sharma. Reliance has also been placed on certain computer printouts seized from the factory premises of NTAL representing sales registers for the period April 2008 to November 2008, wherein sales to various parties including "RG" were reflected. The appellant is alleged to have acknowledged in his statement that certain sales shown therein were arranged through him on commission basis. On the basis of these allegations, it was alleged that believed by the department, the appellant had purchased M.S. Ingots clandestinely removed by NTAL without payment of customs duty and thereby rendered himself liable to penalty under section 112(b) of the Customs Act.

6. Accordingly, 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.

7. The appellant filed a reply to the show cause notice on 28.12.2013 and stated that he is a salaried individual and had merely introduced certain parties. He had never dealt with the goods physically or otherwise and had no role in any alleged contravention. It was specifically contended that no goods were purchased, handled, transported, or financed by the appellant and, therefore, no penalty was imposable upon him.

8. The Commissioner, by the impugned order, however, confirmed the demand against the main noticees and imposed a penalty of Rs. 10,00,000/- on the appellant under section 112(b) of the Customs Act.

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

(i) The Commissioner has placed reliance upon statements recorded under section 108 of the Customs Act. These statements could not have been considered as relevant as the mandatory statutory conditions prescribed under section 138B of the Customs Act had not been followed;

(ii) The allegation of clandestine removal of goods cannot be established on the basis of private records in the absence of corroborative evidence;

(iii) The impugned order is vitiated inasmuch as 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;

(iv) No document, record or incriminating material whatsoever has been seized from the premises of the appellant. The allegation against the appellant is thus based entirely on unauthenticated, 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;

(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;

(vi) The entire 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. The impugned order is vitiated as 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 alleged purchase of M.S. Ingots, sought to be fastened upon the appellant solely on the basis of unverified records of NTAL is merely based on assumptions and presumptions. Not a single piece of documentary evidence has been produced to demonstrate that the appellant had purchased any M.S. Ingots, clandestinely or otherwise;

(viii) Mere mention of the name of the appellant in the internal records of NTAL cannot ipso facto establish purchase or abetment on the part of the appellant;

(ix) For invocation of section 112(b) of the Customs Act, the department must conclusively establish conscious involvement of the person in carrying, removing, selling, purchasing, or otherwise dealing with the goods; and knowledge or reason to believe that such goods were liable to confiscation under Section 111 of the Customs Act, but neither of the aforesaid statutory

ingredients have been specifically alleged nor proved by any admissible evidence, rendering the penalty unsustainable; and

(x) The department failed to produce any evidence of flow of consideration, whether in cash or otherwise. No document has been brought on record to show that NTAL received any cash or payment from the appellant, or the appellant made any such payment to NTAL or significantly, No incriminating evidence has been recovered from the premises of the appellant.

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 these two appeals. 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.

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

12. It is seen from the impugned order that reliance has been placed on the statement made by the appellant under section 108 of the Customs Act. This statement of the appellant cannot be considered as relevant as the procedure contemplated under section 138B of the Customs Act was not followed. This is what was also held by the Tribunal in **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[6].

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

13. So far as the computer printouts are concerns the Commissioner placed reliance upon the statement of the appellant made under section 108 of the Customs Act that sales shown therein were arranged through him on commission basis. It needs to be further stated that these printouts were taken from the factory premises from NTAL and not from any computer in the possession of the appellant.

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 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.

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 so far as it imposes penalty upon the appellant under section 104(b) of the Customs Act,

therefore, cannot be sustained 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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