CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50175 of 2024

[Arising out of Order-in-Appeal No. CCA/CUS/D-II/IMP/ICD/TKD/1433/2022-23 dated 21.02.2023 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Sunshine Impex **...Appellant**
Shop No. 4. 3rd Floor,
Plot No. 182-86, Gali Rui Wali,
Sadar Bazar, Delhi - 110006

VERSUS

Principal Commissioner of Customs Import-New Delhi ICD TKD **...Respondent**
ICD, Tughlakabad,
New Delhi - 110020

APPEARANCE:
Ms. Neha Singhal, Advocate for the Appellant
Shri Ram Pravesh Prasad, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 02.02.2026
DATE OF DECISION: **16.04.2026**

FINAL ORDER NO. 50736/2026

DR. RACHNA GUPTA

M/s. Sunshine Impex, the appellant herein, an importer, had filed Bill of Entry No. 7194852 covered under Container No. HLXU62400472 for clearance of cosmetic goods through their Custom Broker M/s. Karan Logistics. The goods were supplied by M/s. Shenzhen Xinyaongyonghong Import and Export Trade Limited Company, China under Invoice No.HC-1 and Bill of Lading No. HLCUSZX1607AXKT4 both dated 21.07.2016. The Bill of Entry got self assessed at the rate of Rs.74,89,588/- and duty of Rs.18,04,358/- was paid by the importer-appellant. However, based on the intelligence, the goods were examined by the officers

of SIIB, ICD (Import), TKD, New Delhi on 27.10.2016 in presence of two independent witnesses and F-Card Holders of M/s. Karan Logistics. The goods were found mis-delcared in quantity and were found to be of an Indian Origin. Pursuant to subsequent searches and the statements of all concerned recorded that the Show Cause Notice No. 10/121/2016 dated 25.04.2017 was served upon the appellants proposing the rejection of the declared value and the redetermination thereof with the demand of the differential customs duty amounting to Rs.45,76,602/-. The goods were proposed to be considered for confiscation and penalties under Section 112, 114A and 114AA of the Customs Act, 1962 were also proposed to be imposed on the importer-appellant. There were other co-noticees also. The said proposal qua the appellant has been confirmed vide Order-in-Original No. 62/2019 dated 15.05.2019. Appeal against the same has been rejected vide Order-in-Appeal No. 1433/2022 dated 20.02.2023. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Ms. Neha Singhal, learned Advocate for the appellant and Shri Ram Pravesh Prasad, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that the appellant initially filed Bill of Entry on 09.08.2016 but the appellant discovered that the description of goods supplied and contained in the container was incorrect as the goods had been wrongly shipped. Thus the appellant contacted the exporter who vide letter dated 16.08.2016 sought recall of the consignment and thereafter

appellant filed in-Bond Bill of Entry No. 7194852 dated 22.10.2016 (Bill of Entry mentioned in the show cause notice). It is submitted that there is no mis-declaration on part of the appellant. The penalty under Section 112(a) read with 114AA of the Customs Act, 1962 has been wrongly imposed.

3.1 It is further mentioned that the appellant vide their reply to the show cause notice dated 06.06.2017 had brought the aforementioned fact to the notice of the department. In addition had requested cross-examination of the person investigated and whose statements were recorded during investigation. But no such opportunity was given to the appellant. The order of imposition of penalty when the appellant has not committed any offence in relation to import of the said consignment and had no intention to evade the customs duty while getting the consignment cleared, is therefore liable to be set aside. With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has mentioned that the Bill of Entry filed by the appellant is of 22.10.2016. The letter dated 16.08.2016 has wrongly been relied upon by the appellant.

4.1 Learned Departmental Representative further submitted that adjudicating authorities below have arrived at the clear findings that the importer failed to declare the counterfeit nature of the goods but has declared those goods in the Bill of Entry as genuine

branded goods. The penalty has rightly been imposed. With these submissions, the appeal is prayed to be dismissed.

5. Having heard both the parties and perusing the entire records, subsequently with respect to the impugned Bill of Entry, it is observed that the Bill of Entry was filed on 22.10.2016 by M/s. Sunshine Impex through CHA M/s. Karan Logistics to receiving the consignment of Bill of Lading No. HLCUSZX1607AXKT4 dated 21.07.2016 declaring the goods as wet tissues and cosmetics being supplied by M/s. M/s. Shenzhen Xinyaongyonghong Import and Export Trade Limited Company, China. The plea of the appellant is that the goods imported are not ordered by him and he was surprised to check the packing list which led him to file warehousing Bill of Entry to re-export the same. The importer appellant also received a letter from the supplier to re-call the shipment back dated 16.08.2016. Hence the importer filed the bill of entry for warehousing and not for home consumption. The adjudicating authority has held that the Bill of Entry was not filed under first check nor the goods were ever requested for warehousing. The order of Assistant Commissioner directing warehousing due to noticed misdeclaration in Bill of Entry dated 22.10.2016 is held to have been misunderstood by the appellant to be an order under Section 49 of the Customs Act. The plea of appellant is held to be factually incorrect.

6. I observe that appellant has not produced any document which may falsify the said findings. Even the Bill of Entry is not the part of record. It is not possible for me to hold that the Bill of Entry

dated 22.10.2016 was In-Bond Bill of Entry requesting warehousing instead of clearance for home consumption. The letter dated 16.08.2016 is also not the part of record. It is rather apparent admission in the statement of appellant that the goods recovered during checking are different from the goods declared and are counterfeit goods which may be dealt in the manner as per IPR Rules and appellant denied to claim the goods. There is no retraction to the said statement.

7. Admissions are the best evidence which need no further proof. The cross-examination of any other person also cannot wash out the appellant's admission which has never been retracted. Thus, the goods needs redetermination and are liable for confiscation being contrary to the declaration. Since no evidence is produced to support the plea of appellant (as observed above) the only possibility is of mens rea on part of the appellant to mis-declare the goods with intent to evade customs duty. The order imposing penalty on the appellant is therefore held to have no infirmity. With these observations, the order under challenge is upheld vis-à-vis imposition of penalty on the appellant. Consequent thereto the appeal is dismissed.

[Order pronounced in the open court on **16.04.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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