CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

CUSTOMS APPEAL NO. 51741 OF 2023

[Arising out of Order-in-Appeal No. D-II/Prev./NCH/985/2022-23 dated 4.10.2022 passed by the Commissioner of Customs (Appeals) New Delhi]

M/S ARTEX TEXTILES PVT. LTD. **...APPELLANT**
Kh No. 282, Gali number 4 Industrial Area
Shalimar Village
Delhi 110088

VERSUS

COMMISSIONER OF CUSTOMS(PREVENTIVE) **..RESPONDENT**
New Custom House, Near IGI Airport
New Delhi 110037

APPEARANCE:
Shri Richik Harikant , Advocate for the Appellant
Shri Girjesh Kumar, Authorised Representative for the Revenue

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50766 /2026

DATE OF HEARING: 30.03.2026
DATE OF DECISION: 22/04/2026

P. V. SUBBA RAO:

M/s. Artex Textiles Pvt. Ltd.[1] filed this appeal to assail the Order dated 4.10.2022[2] passed by the Commissioner (Appeals) in which he upheld the Order dated 10.1.2022 passed by the Joint Commissioner and rejected the appellant's appeal before him.

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1 **The appellant**
2 **Impugned order**

2. The appellant had imported goods and declared them as 'Polyester knitted fabric' and quantity as 16,178 kg in the Bill of Entry no. 6111648 dated 17.12.2019 filed in Inland Container Depot[3] Panchi Gujaran, Sonepat, Haryana. Acting on intelligence, the officers of the Commissioner of Customs (Preventive), New Delhi examined the goods, drew and sent samples for testing to the Central Revenue Control Laboratory[4]. They also weighed the goods.

3. The quantity of the goods was 17,330 kg which was 7% more than the declared weight of 16,178.60 kg. The goods were declared as 'Polyester knitted fabric' and after testing, CRCL reported it to be 'Knitted fabric-95.5% polyester and 4.5% spandex'.

4. Statement of the Director of the appellant firm, Shri Fakir Chand Sarawagi was recorded in which he agreed to the rejection of the declared value and its re-determination. He also waived the issue of Show Cause Notice and personal hearing. Accordingly, the Joint Commissioner passed his order as follows:

ORDER

> "(i) 1 reject the assessable value of Rs. 21,56,541/- declared by the importer in respect of goods imported vide Bill of Entry No. 6111648 dated 17.12.2019, under Rule 12 of the Customs Valuation Rules (Determination of Value of Imported Goods) Rules 2007[5] and re-determine the assessable value as Rs. 24,47,863/- under Rule 5 of the Customs Valuation Rules, 2007.
>
> (ii) I confirm the total Customs duty amounting to Rs. 5,74,758/- in respect of goods imported vide Bill of Entry No. 6111648 dated 17.12.2019 as detailed in Table-A supra. The total duty of Rs. 5,74,758/- includes duty of Rs. 5,06,356/- being self assessed duty and Rs. 68,402/- (Rs. Sixty Eight Thousand Four Hundred and Two

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3 **ICD**
4 **CRCL**
5 **Valuation Rules**

only) being differential duty on account of mis-declaration in terms of description and valuation of imported goods and the same is recoverable under Section-28 of the Customs Act. 1962 alongwith interest on delayed payment of differential duty under Section-28AA of the act ibid.

iii) I confiscate the goods seized under Panchnama dated 24.12.2019 having re-determined value of 24,47,863/- as detailed in Table-A supra attracting total differential Customs duty amounting to Rs. 68,402/- (Rs. Sixty Eight Thousand Four Hundred and Two only) under Section 111 (m) of the Customs Act, 1962. However, I give an option to the Importer to redeem these goods on payment of redemption fine of Rs. 10,000/- (Rupees Ten Thousand Only) under Section 125 of the Customs Act 1962.

(iv) I impose a penalty equal to the differential duty amount i.e. Rs. 68,402/- (Rs. Sixty Eight Thousand Four Hundred and Two only) under Section 114A of the Customs Act, 1962 on M/s Artex Textile Private Limited, Kh. No. 282, Gali Number 4 Industrial Area, Shalimar Village, Delhi-110088 (IEC-0509053581). However, the party has an option to pay penalty as per the provisions of Section 114A of the Customs Act, 1962 within a period of 30 days to avail the facility of payment of 25% of penalty imposed."

5. Aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who upheld the order of the Joint Commissioner.

Submissions on behalf of the appellant

6. Learned counsel for the appellant made the following submissions:

(i) The allegation that the goods were found to be mis-declared in terms of description and value resulting in short payment of duty was not correct as the description (Polyester Knitted Fabric) covers the goods as ascertained by the test report as well. There is no change in the rate of duty and therefore the allegation that the appellant had mis-declared the goods also has no revenue implication.

(ii) As far the allegation of mis-declaration of quantity, the appellant had declared the quantity as 16178.60

kg and on examination, the quantity was found to be 17330.00 kg and therefore, the difference in weight is very meager which may be due to the differences in weighing differences in scales. Hence there is no mis-declaration with intent to evade duty.

(iii) So far as allegation of mis-declaration of the value is concerned, the declared value of USD 1.05/kg has been rejected and the same has been enhanced to USD 1.94/kg on the ground that price of similar goods have been noticed at higher values without examining the applicability of valuation Rule 5. The Adjudicating Authority mentioned in his Order that the data of contemporaneous imports were shown to the director of the Appellant Company and the lowest value found as per the contemporaneous import under Bill of Entry No. 5611190 dated 09.11.2019 was the lowest. However, there is no mention as to whether the description ascertained by the test report in the present case being Knitted Fabric approx. 95.5% Polyester and approx. 4.5% of Spandex (Elastomeric Yarn) GSM-260+-5%. was similar to the description of the bill of entry which is being applied in the present case.

(iv) Merely going by the description given in the National Import Database (NIDB) data was erroneous as Valuation Rule 5 lays down the criteria of "similar goods" for comparison of values. In the definition of

"similar good" the emphasis is laid on like characteristics and like component materials which enable them to perform the same function and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of Trademark. It further provides that the goods in a sale for comparison must be at the same commercial level and in substantially the same quantity, and if it is not possible then adjustments are to be made on demonstrated evidence. No such comparison has been elaborated either in the Order in appeal or in the order in original and merely the bill of entry number has been mentioned. The Appellant relies on the Judgment in the case of **R.S. Merchant** versus **CC, Mumbai**[6].

(v) The differential duty as held in the present case is merely of Rs. 68,402/- which cannot to set to be very substantial difference and considering the fact that the appellant is a regular importer of fabric, the difference in the purchase price can be attributed to the general business discount.

(vi) The Ld. Commissioner (Appeals) had merely rejected the Appeal holding that once it is found that the goods were found to be different from what has been declared the transaction value has rightly been rejected and the appellant having agreed to pay

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differential duty, fine and penalty, it was not open to challenge the same. There was no mis-declaration of goods as the declaration was "Polyester Knitted Fabric of Mix Lot" (Rolls of assorted colour and weight) which is also applicable for the goods found on testing as well.

Submissions on behalf of the Revenue

7. Learned authorised representative for the Revenue supported the impugned order and submitted as follows:

(i) The Joint Commissioner has correctly rejected the transaction value under Rule 12 of the Valuation Rules and redetermined the value under Valuation Rule 5 because both the nature of the fabric and the quantity were mis-declared. While the appellant declared the fabric to be of polyester, on testing, it was found to contain 4.5% spandex and 95.5% polyester. The quantity of the goods declared was 16,178 kg when the actual quantity was 17,330 kg.

(ii) The appellant's director admitted to the mis-declaration and also agreed to pay the differential duty, fine and penalty.

(iii) Since the goods were mis-declared, they were correctly confiscated under section 111(m) and allowed redemption on payment of redemption fine.

(iv) Since there was an attempt to evade payment of duty, penalty under section 114A of the Act was also correctly imposed.

(v) Once the appellant agreed to the valuation before the Joint Commissioner, it was not open to him to challenge it thereafter in appeal.

(vi) The impugned order may be upheld and the appeal may be rejected.

Findings

8. We have considered the submissions advanced by both sides and perused the records.

9. The facts are not in dispute. The appellant imported goods described as 'Polyester knitted fabric' and quantity as 16,178 kg in the Bill of Entry. On examination, the quantity was found to be 17,330 kg which was 7% more than the declared weight. After testing by CRCL, it was found to be 'Knitted fabric-95.5% polyester and 4.5% spandex'.

10. It is common knowledge that spandex is often blended in the fabrics in a small quantity to make it more elastic and comfortable to wear. Merely because there was 4.5% spandex, the imported fabric does not cease to be 'polyester knitted fabric'. It would have been a different case if the appellant had declared the goods did not contain any spandex. It must also be noted that the appellant imported the goods as 'mixed lot' or stock lot and it is possibly for this reason, that the fabric was sold

by weight (and not by length as the fabric is usually sold). We, therefore find that there was no mis-declaration of the description of the goods in this case. The quantity, however, was mis-declared and the actual quantity that was imported was about 7% more than the declaration.

11. The value of the goods declared in the Bill of entry was for 16,178 kg but the actual quantity imported was 7% more. Hence, the officer had a reason to doubt the truth and accuracy of the transaction value. Valuation Rule 12 reads as follows:

> **"12. Rejection of declared value. -**
>
> (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.
>
> (2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).
>
> Explanation.-(1) For the removal of doubts, it is hereby declared that:-
>
> (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
>
> (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
>
> (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
>
> (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents."

12. As can be seen, Valuation Rule 12 does provide for rejection of transaction value and if it is so rejected by the proper officer, the value should be redetermined as per Valuation Rules 4 to 9. In order to reject the transaction value, the proper officer should have, in the first place, some reason to doubt and if he has such a reason, he can call for further information from the importer and if the importer fails to provide such information or after considering the information provided, the proper officer still has a reasonable doubt about the truth or accuracy of the transaction value, it can be rejected. In this case, the appellant was asked about the value and its director said, in response, that he was prepared to pay the differential duty and has further specifically waived both the SCN and the personal hearing.

13. In the above factual matrix of this case, we find that the Joint Commissioner correctly rejected the transaction value under Valuation Rule 12 and re-determined it under Valuation Rule 5. He assessed the total duty at 5,74,758/- instead of self-assessed duty of Rs. 5,06,536/- the difference being Rs.68,402/-.

14. However, the Joint Commissioner clearly erred in ordering that the differential duty of Rs. 68,402/- was recoverable under section 28 of the Act. When goods are imported into India, the

importer has to make an entry of the goods by filing a Bill of Entry under section 46 of the Act. The importer has to also self-assess the duty as per section 17(1) of the Act. There is no separate document through which the importer has to self-assess duty. It is done as a part of the bill of entry itself. All aspects which go into assessment, viz., the nature of the goods, their classification, value, rate of duty, exemption notifications claimed, etc. are all indicated in the Bill of Entry itself. By filing the Bill of Entry under Section 46, the importer also completes his self-assessment under Section 17(1).

15. Self-assessment of duty by the importer is subject to any re-assessment by the officer under section 17(4) of the Act. At times, this process of re-assessment by the officer may be repeated. For instance, if the bill of entry is assessed by the officer differently from the self-assessment by say, changing the classification or denying an exemption notification, he re-assesses the duty on the goods. However, before the goods are released, they are examined and if the examining officer finds that the goods were different, of a larger quantity or of a different grade, etc., he will refer it back to the Assistant Commissioner who had done the re-assessment with his examination report. The Assistant Commissioner again changes his assessment. Section 17(4) does not say that the officer can only re-assess the Bill of Entry only once and it is a matter of everyday occurrence that the re-assessment is done more than once by the officer.

16. At times, if the importer had forgotten to claim an exemption notification which he was entitled to and realizes his mistake before the goods have been cleared, he would request the Assistant Commissioner to recall his Bill of Entry and apply that notification and re-assess the duty and if convinced, the would do so. Such re-assessments and modifications happen as a matter of course in every custom house. This process of assessment and re-assessment will come to an end, after the duty is paid and the proper officer issued an order under section 47 clearing the goods for home consumption (which is commonly known as customs 'Out of Charge'). As soon as this order is issued under section 47 of the Act, the goods cease to be imported goods under section 2(25) of the Act and cease to be dutiable goods under section 2(14) of the Act, the importer ceases to be the importer under section 2(26) of the Act qua those goods and therefore, there can be no further assessment or re-assessment of duty. Sections 2(14), 2(25), 2(26), 17, 46 and 47 are reproduced below.

> **"Section 2**. **Definitions**.—In this Act, unless the context otherwise requires,—
>
> **...**
>
> (14) '**dutiable goods'** means any goods which are chargeable to duty and on **which duty has not been paid**;
>
> (25) '**imported goods'** means any goods brought into India from a place outside India but **does not include goods which have been cleared for home consumption**;
>
> (26) '**importer'**, in relation to any goods **at any time between their importation and the time when they are cleared for home consumption**, includes any owner, beneficial owner or any person holding himself out to be the importer;
>
> **Section 17. Assessment of duty. -**
>
> **(1) An importer entering any imported goods under section 46 , or an exporter entering any export goods under section 50 ,**

shall, save as otherwise provided in section 85 , self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

Section 46. Entry of goods on importation. - (1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided also that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:-

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

"Section 47. Clearance of goods for home consumption. -

(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules .

(2) The importer shall pay the import duty-

(a) on the date of presentation of the bill of entry in the case of self assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or

(c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section:

Provided also that if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section."

17. After the proper officer issued an 'Out of Charge' order under section 47, there cannot be any more assessment of duty because the goods will no longer be imported goods. However, the assessment can be modified through one of the five methods available in the Act- each of which is subject to some limitations. Just as in a civil suit after a decree is issued, there cannot be another decree on the same subject matter but the decree can be modified through appeals or revision, assessment can also be modified through any of these five methods.

a) Appeal to the Commissioner (Appeals) by either side under section 128 of the Act against the Bill of Entry.
b) A notice issued under section 28 of the Act by the proper officer to recover duty not paid, short paid or erroneously refunded.
c) Finalisation of assessment under section 18 of the Act if the assessment was provisional.

d) Amendment of documents by the importer under section 149 of Act if permitted by the proper officer.

e) Correction of clerical and arithmetical mistakes under section 153 of the Act by the officer.

18. Each of these methods of modification of the assessment are subject to some limitations indicated in the respective sections. However, none of these would apply while the assessment is still open and the 'Out of Charge' order has yet to be been issued. Therefore, section 28 would apply only after the out of charge order is issued and not before when the assessment is still open. If the importer self-assesses duty at certain amount and pays it and thereafter, the proper officer re-assesses it to a higher amount, the importer has to pay duty re-assessed. Section 28 would not apply to such cases because there is no short payment of duty; duty can be paid anytime before the clearance of goods and the officer will not clear the goods unless the duty is paid. It is for this reason that the 'relevant date' to reckon the time limit for issuing a notice under section 28 is the date on which the proper officer makes an order for clearance of the goods. Relevant portion of section 28 of Act is reproduced below:

> **"Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. -**
> (1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-
> (a) **the proper officer shall, within two years from the relevant date, serve notice** on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made,

requiring him to show cause why he should not pay the amount specified in the notice;
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(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-
(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,
by the importer or the exporter or the agent or employee of the importer or exporter, **the proper officer shall, within five years from the relevant date, serve notice** on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

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Explanation 1 . - For the purposes of this section, "**relevant date" means,**-
(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
(c) in a case where duty or interest has been erroneously refunded, the date of refund;
(d) in any other case, the date of payment of duty or interest."
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19. In short, before the goods are cleared, assessment and re-assessment is done under section 17 of the Act by the proper officer. After the goods are cleared, if there is any short paid duty, a notice under section 28 must be issued treating the date of clearance of goods as the relevant date for limitation. In this case, the assessment was not even completed by the proper officer. Before that happened, the officers of the Commissioner of Customs (Preventive) intervened and examined the goods, got them tested instead of letting these happen in the normal course of assessment and re-assessment. The Joint Commissioner (Preventive) took over the role of the jurisdictional Assistant Commissioner of Customs and re-assessed the goods and passed an order. However, he held that part of the duty which he re-

assessed as recovery of duty not paid under section 28. Section 28, as discussed above, is not applicable at all to this case. This is a simple case of re-assessment of the duty which would have been done in the normal course by the jurisdictional Assistant Commissioner but which the Joint Commissioner (Preventive) did through his order. Therefore, the assertion of the Joint Commissioner that duty to the extent of Rs. 68,402/- was the differential duty recovered under section 28 of the Act is incorrect. It has wrongly been upheld by the Commissioner (Appeals).

20. Next is the question of confiscation of the goods under section 111(m) of the Act and their redemption on payment of a fine of Rs. 10,000/- under section 125 of the Act. Section 111(m) reads as follows:

> **"Section 111. Confiscation of improperly imported goods, etc. -** The following goods brought from a place outside India shall be liable to confiscation: -
>
> ……
>
> (m) **any goods which do not correspond in respect of value or in any other particular with the entry made under this Act** or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;"

21. There is no doubt that the goods did not correspond to what was declared in the Bill of Entry in terms of weight- the actual weight being 7% more than declared. Therefore, the goods were covered by section 111(m) of the Act. Section 111 states that various categories of goods 'shall be liable to confiscation' but does not say that 'they shall be confiscated.

Oxford Advanced Learner's Dictionary explains the meaning of the word 'liable' as follows:

> **liable: 1.** Legally responsible for paying the cost of sth: *You will be liable for any damage caused. The court ruled he could not be held personally liable for his wife's debts.*
>
> **2**. Likely to do sth.: *We're all liable to make mistakes when we're tired. The bridge is liable to collapse at any moment.*
>
> **3.** likely to be affected by sth. SYN prone: *Your are more liable to injury if you exercise infrequently.*
>
> **4. Likely to be punished by law for sth.: *offenders are liable to fines of up to $ 5000.***
>
> **5**. having to do sth. By law: *People who earn under a certain amount are not liable to pay tax.* "

22. The most appropriate meaning of the word 'liable' in this context is 'likely to be punished by law for something'. The goods covered by section 111 of the Act are "likely to be confiscated" and not "they shall be confiscated". Even if the goods fall under any of the clauses of section 111, it is open to the adjudicating authority to confiscate them or to not confiscate them. The adjudicating authority must apply his mind and decide whether or not to confiscate the goods. The scope of the expression 'liable to' was examined by the Hon'ble Delhi High Court in **Jain Exports Pvt. Ltd. vs Union of India**[7] and the relevant portion of the judgment is as follows:

> **"108.** We have so far seen how the Collector's order is vitiated due to arbitrariness in the implementation of the policy and for other reasons. Let us look at the final operative order now. The Collector has confiscated the goods but released them on fine of Rs. 5 crores. Imposition of confiscation and penalty is a *quasi judicial* function. Therefore, the order confiscating the goods should be a reasoned order. But the impugned order is not a speaking order. While imposing the fine of Rs. 5 crores the Collector has held that the petitioner had "deliberately flouted" the provisions of law. Neither the law nor the peculiar facts of this case are even attempted to be discussed before taking an extreme step of confiscation and imposition of an excessively

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7 1987(29) ELT 753(Del.)

heavy penalty. Proviso to Section 125 lays down that the fine in lieu of confiscation shall not exceed the market price of the goods confiscated, less, in case of the imported goods, the duty chargeable thereon. The Collector did not even investigate what was the market price of the goods imported. This is a clear failure of the statutory duty by the Collector. **The Collector also overlooked that the confiscation and penalty are penal provisions of the Statute. Such provisions are to be strictly construed and exercised with judicial discretion. The language of the Section is "such goods shall be liable to confiscation". The language is not "such goods shall be confiscated". Two things are indicated by this difference. The first is, that principal of absolute liability is not applicable, in case of liability to confiscation. Secondly, whether the goods should be confiscated or not is a matter of discretion of the Collector. So also what penalty he should impose is also a matter of discretion. The proper legal approach is illustrated by the following cases :**

109. In *Shah Rikhabdas Bharwanlal* v. *The Collector of Customs*. (1961) (II) M.L.J. 443, identical facts situation was present. The goods of the appellants were confiscated while some other merchant for the same offences were let off with a warning. Rajmanner C.J., speaking for the Division Bench of Madras High Court, held: "It should not be overlooked that here we have the case of deprivation of property because confiscation is just that. It is idle to say that it is not, because on payment of a fine which is equal to the value of the goods, the importer can take delivery of the goods. It only means that the appellants having been deprived of their goods are given an offer to purchase such goods" (Page 4). **The learned Chief Justice further observed "the language (of old Section 167 of the Sea Customs Act) does necessarily imply that there is a discretion because the language is not 'such goods shall be confiscated'. On the other hand the language is 'such goods shall be liable to be confiscated'. The Collector of Customs while enacting under Section 167 is obviously acting as a *quasi judicial* Tribunal, such discretion must be exercised judicially and not arbitrarily. The Collector must decide in each particular case if there were circumstances which would call for the drastic publishment of confiscation.** If there was a case in which discretion should have been exercised in favour of the importer, this was such a case.....The collector does not appear to have dealt with case as if he was vested with judicial discretion because he has not given any reason why the drastic publishment of confiscation should have been imposed on the appellants whereas two other similar merchants who had committed the same offence had been let off with a warning. (Page 448) On these findings the High Court set aside, the order of confiscation.

(emphasis supplied)"

23. In the facts of this case, we find that although the goods were liable to confiscation, considering that there was only a 7% excess quantity over what was declared and that the goods were essentially a mixed lot or stock lot goods, we find that confiscation was not warranted. Consequently, the confiscation of the goods and the redemption fine by the Joint Commissioner,

upheld by the Commissioner (Appeals) in the impugned order deserve to be set aside and are set aside.

24. Penalty equal to the duty is imposable under section 114A if the duty was not paid or short paid for certain reasons and recovered under section 28 of the Act. This section reads as follows:

> **"Section 114A. Penalty for short-levy or non-levy of duty in certain cases.**
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> Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:
>
> **Provided** that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28 , and the interest payable thereon under section 28AA , is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:
>
> **Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :
>
> **Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:
>
> **Provided** also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA , and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :
>
> **Provided** also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114 .
>
> **Explanation** . - For the removal of doubts, it is hereby declared that -
>
> (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

25. Since we have set aside the finding that the duty was short paid and was recovered under 28 of the Act was incorrect, so is the consequential penalty under section 114A of the Act also deserves to be set aside.

26. In view of the above, the impugned order is modified and the appeal is partly allowed as follows:

a) The re-determination of the value of the imported goods and re-assessment of the duty to Rs. 5,74,758/- is upheld and the entire proceedings are merely proceedings of re-assessment of duty under section 17(4) of the Act by the Joint Commissioner. Reference to Section 28 of the Act and holding that the differential duty of Rs. 68,402/- was recovered under section 28 is set aside.

b) The confiscation of the goods under section 111(m) of the Act, redemption fine under section 125 of the Act and penalty under section 114A of the Act are set aside.

c) The appellant will be entitled to consequential relief.

[Order pronounced on **22/04/2026**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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