CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH, COURT NO. I

CUSTOMS APPEAL NO. 50089 OF 2024

[Arising out of the Order-in-Original No. 02/2022-Commr. dated 19/06/2022 passed by The Commissioner of Customs (Preventive), Jodhpur.]

M/s United Natural Stone (100% EOU), **……Appellant**
F-325 to 327 & G1-296 to 298,
RIICO Industrial Area, Bhamashah,
Kaladwas, Udaipur (Raj.) 313 003.

Versus

Commissioner of Customs, (Preventive), Jodhpur, **….Respondent**
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005.

WITH
CUSTOMS APPEAL NO. 51978 OF 2023

[Arising out of the Order-in-Original No. 02/2022-Commr. dated 19/06/2022 passed by The Commissioner of Customs (Preventive), Jodhpur.]

Shri Ashok Kumar, Proprietor, **……Appellant**
M/s Bacchic India Stone,
16, Abhinandan Complex, Keshav Nagar,
University Road, Udaipur (Raj.) 313 001
Presently residing at 8, New Mangalam Complex,
Shobhagpura, Udaipur (Raj.).

Versus

Commissioner of Customs, (Preventive), Jodhpur, **….Respondent**
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005.

WITH
CUSTOMS APPEAL NO. 51979 OF 2023

[Arising out of the Order-in-Original No. 02/2022-Commr. dated 19/06/2022 passed by The Commissioner of Customs (Preventive), Jodhpur.]

Shri Dharamveer Singh Kanda, **……Appellant**
Former Partner,
M/s United Natural Stone (100% EOU)
F-325 to 327 & G1-296 to 298,
RIICO Industrial Area, Bhamashah,
Kaladwas, Udaipur (Raj.) 313 003
Presently residing at 54, Anand Vihar, Tekri Road,
Udaipur (Rajasthan) – 313 002.

Versus

Commissioner of Customs, ...Respondent
(Preventive), Jodhpur,
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005.

WITH
CUSTOMS APPEAL NO. 51980 OF 2023

[Arising out of the Order-in-Original No. 02/2022-Commr. dated 19/06/2022 passed by The Commissioner of Customs (Preventive), Jodhpur.]

Shri Pratap Singh Kanda, Partner, ...Appellant
M/s United Natural Stone (100% EOU)
F-325 to 327 & G1-296 to 298,
RIICO Industrial Area, Bhamashah,
Kaladwas, Udaipur (Raj.) 313 003
Presently residing at 54, Anand Vihar, Tekri Road,
Udaipur (Rajasthan) – 313 002.

Versus

Commissioner of Customs, ...Respondent
(Preventive), Jodhpur,
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005.

WITH
CUSTOMS APPEAL NO. 51981 OF 2023

[Arising out of the Order-in-Original No. 02/2022-Commr. dated 19/06/2022 passed by The Commissioner of Customs (Preventive), Jodhpur.]

Shri Vikram Singh, Proprietor, ...Appellant
M/s Shree Shyam Stone,
A-39, Main Post Office, Shastri Nagar,
Jaipur (Raj.)
Presently residing at VPO Khol,
District – Rewari (Haryana).

Versus

Commissioner of Customs, ...Respondent
(Preventive), Jodhpur,
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005.

WITH
CUSTOMS APPEAL NO. 51982 OF 2023

[Arising out of the Order-in-Original No. 02/2022-Commr. dated 19/06/2022 passed by The Commissioner of Customs (Preventive), Jodhpur.]

Shri Harmendra Singh Kanda, ...Appellant
Former Partner,
M/s United Natural Stone (100% EOU)
F-325 to 327 & G1-296 to 298,
RIICO Industrial Area, Bhamashah,
Kaladwas, Udaipur (Raj.) 313 003
Presently residing at 54, Anand Vihar, Tekri Road,
Udaipur (Rajasthan) – 313 002.

Versus

Commissioner of Customs, ...Respondent
(Preventive), Jodhpur,
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005.

AND
CUSTOMS APPEAL NO. 51983 OF 2023

[Arising out of the Order-in-Original No. 02/2022-Commr. dated 19/06/2022 passed by The Commissioner of Customs (Preventive), Jodhpur.]

Shri Ashok Kumar, Partner, ...Appellant
M/s United Natural Stone (100% EOU)
F-325 to 327 & G1-296 to 298,
RIICO Industrial Area, Bhamashah,
Kaladwas, Udaipur (Raj.) 313 003
Presently residing at 8, New Mangalam Complex,
Shobhagpura, Udaipur (Rajasthan) 313 001.

Versus

Commissioner of Customs, ...Respondent
(Preventive), Jodhpur,
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005.

APPEARANCE:

Shri A.K. Prasad and Shri Jitin Singhal, Advocate for the appellant.
Shri Bhagwat Dayal, Authorized Representative for the Department

CORAM:
HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO's. 50798-50804/2026

DATE OF HEARING : 19.01.2026
DATE OF DECISION: 27.04.2026

P.V. SUBBA RAO

The order dated 19.06.2022 passed by the Commissioner[1] is assailed in these appeals insofar as it pertains to each of the appellants. M/s. United Natural Stones, Udaipur[2] has assailed in its appeal the confirmation of demand of customs duty of Rs. 10,80,28,243/- under section 28(4) of the Customs Act, 1962[3] invoking extended period of limitation covering the period 23.6.2016 to 12.1.2020 with interest under section 28AA of the Customs Act. It has also contested imposition of an equal amount as penalty under section 114A of the Customs Act. The other appellants have assailed the following personal penalties imposed on them:

S.No.	Appellant	Appeal No.	Penalty imposed (Rs.)
1	Ashok Kumar, Partner United Natural Stone	C/51978/2023	1,00,00,000/- under section 114AA of the Act
2	Dharamveer Singh Kanda, Former Partner United Natural Stone	C/51979/2023	10,00,000/- under section 114AA of the Act
3	Pratap Singh Kanda, Partner United Natural Stone	C/51980/2023	25,00,000/- under section 114AA of the Act
4	Vikram Singh, Proprietor, Shree Shyam Stone	C/51981/2023	20,00,000/- under section 114AA of the Act
5	Harmendra Singh Kanda, Former Partner United Natural Stone	C/51982/2023	10,00,000/- under section 114AA of the Act
6	Ashok Kumar, Proprietor, Bacchic India Stone	C/51983/2023	20,00,000/- under section

1. **Impugned order**
2. **United**
3. **Customs Act**

			114AA of the Act

2. United is a partnership firm and is a 100% Export Oriented Unit[4] which imports and also buys domestically blocks of marble and makes dressed marble blocks, marble slabs and marble tiles out of them and exports. Units undertaking to export their entire production of goods and services can set up 100% EOUs and they will be entitled to benefits including duty free import of raw material as per Chapter 6 of the Foreign Trade Policy[5] framed under the Foreign Trade (Development & Regulation) Act, 1992[6]. United had obtained Letter of Permission[7] to operate as 100% EOU and imported goods duty free availing the benefit of exemption Notification No. 52/2003-CUS dated 31.3.2003 (as amended).

3. Receiving intelligence that United had imported rough marble blocks availing the benefit of Notification No. 52/2003-CUS but violating the Actual User Condition of the notification, it sold the rough marble in the domestic market, its factory was searched by the officers from 9.1.2020 to 12.1.2020 and some records and files were retrieved. Data stored in its Google Drive was downloaded to the computer and the hard disk was taken into possession.

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4. EOU
5. FTP
6. FTDR Act
7. LOP

4. The stock of the marble was verified and a shortage of 594.294 MT of imported rough marble, 58.538 cubic metres of imported dressed marble black, 8,483.294 square metres of polished marble slabs & tiles, 465.981 sqm of polished granite slabs & tiles, 2.31 CBM of dressed granite block, 1,657.88 sqm of sandstone dressed blocks, 258.686 sq m of polished tabletop was noticed. Shri Ashok Kumar, partner of United accepted during the panchnama that the stock was found short.

5. The office of United was searched on 9.1.2020 and some loose papers and documents were taken into possession.

6. On 4.3.2021, the residence of Shri Ashok Kumar, partner of United was searched and two files containing 382 pages and 180 pages and the mobile phone of Shri Ashok Kumar were taken into possession.

7. After completing the investigation, Revenue came to the *prima facie* view that United had violated the conditions of the FTP in respect of the 15,104.1 MT of marble blocks imported by it. The details are as given in Table 3 of the SCN follows:

Table -3
Year-wise analysis of import & Physical stock

M/s United Natural Stones, Kaldwas, Udaipur (100% EOU)		
Year-wise analysis of import & physical stock (Dressed marble/marble slabs/tiles)		
Year	Qty imported (MT)	Assessed value of import (Rs.)
(1)	(2)	(3)
2016-17 (wef 23.6.16)	3372.24	71259567.3
2017-18	1656.72	22399565
2018-19	5606.83	80940166.2
2019-20	4463.36	65503165

TOTAL		**15104.15**	**240102463**
Less Physical stock (Rough Marble blocks) available in unit during stock verification on 10-11.01.2020	4325.221	4325.22	
Less Physical stock (Dressed Marble blocks) available in unit during stock verification on 10-11.01.2020 (17.981 CBM)	48.75	49.74 (after considering SION norms)	
Less Physical stock (Marble slabs-2 cm) available in unit during stock verification on 10-11.01.2020 (23733.337 sqm)	1286.82	1313.08 (after considering SION norms)	
Less Physical stock (Marble slabs-3 cm) available in unit during stock verification on 10-11.01.2020 (12827.169 sqm)	1043.23	1064.52 (after considering SION norms)	
Difference of imported and physical stock equivalent to rough marble blocks in MT			**8351.58**

8. Thus, the demand included not only the 8,351.58 MT of marble blocks found short but also 6,752.56 MT found in stock.

9. As for the stock of 8,351.58 MT of marble blocks, the case of the United is that it had manufactured or got manufactured final products, viz., marble slabs and exported them directly as well as through third parties. The department, however, came to the *prima facie* view that the entire 8,351.58 MT of the imported marble blocks were sold in the domestic market and instead marble slabs/tiles manufactured from indigenous marble blocks were exported. The department also came to the *prima facie* conclusion that marble exported by the appellant through third parties was mostly of 'Harmony Brown' grade which was only available in India and direct exports were all sales made through Shri Ashok Kumar's firm

in the USA. Of the 167 export invoices issued by the appellant, 58 were for exports through third parties and the rest were direct exports.

10. Therefore, the SCN proposed recovering the duty on the entire quantity of the marble (15,104.1 MT) imported by the United with interest and to impose penalties on United and others which proposals were confirmed with slight modification by the Commissioner in the impugned order. However, he accepted two of the contentions of the United; (a) that FIFO (first in first out) method of inventory management should be considered instead of LIFO (last in first out) method which resulted in removing 6 Bills of Entry from the demand; and (b) No additional duty of customs was leviable on the imported marble blocks before 1.7.2017. As a result, he confirmed demand only on 14,184.8 MT (instead of 15,104.1 MT) of marble blocks.

Submissions of the appellants

11. Shri A K Prasad and Shri Jitin Singhal learned counsels for the appellants made the following submissions:

a) The scheme of 100% EOU is an export promotion scheme introduced in the FTP which is operated by the Directorate General of Foreign Trade[8]. Therefore, before taking any action, the matter should have been referred to the DGFT to take action. Customs department has no jurisdiction in the matter.

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8. DGFT

b) The demand was raised only on the ground that the imports were in contravention of the FTP [para 31 (i) and Table 34 and para 20.5 of the SCN] but the Commissioner has broken it into two parts- the first part being on account of imports being contrary to the FTP and the second part on account of diversion of imported marble [paras 5.14.3 and 5.15.4 of the impugned order]

c) The demand on 8,351.58 MT of rough marble blocks was raised on the ground that they were diverted to the local market clandestinely. The SCN does not say that this marble was first received in the factory of United and then diverted. Unless the marble was received within the factory, the jurisdictional officer of United would have no jurisdiction and only the Commissioner of Customs at Mundra from where the goods were imported would have jurisdiction. However, the Commissioner rejected this submission on the ground that the goods were re-warehoused in the factory and then diverted. This goes beyond the SCN.

d) As per table 33 of the SCN, the demand was raised on all marble blocks imported by United on the ground that DGFT notification no. 99 dated 20.11.2014 and DGFT notification no. 27 dated 17.9.2016 have been contravened. This assertion is not correct because as per para 6.01 (d) (i) of FTP and 6.01(g) of the Handbook of Procedures[9], import of only prohibited goods is barred; all other goods including restricted goods could be imported by a 100% EOU. The LOP issued to the United specifically permitted import of marble blocks. Therefore, the demand is not tenable.

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9. HBP

e) It is for the DGFT to decide if there was any violation of FTP and customs has no jurisdiction to make that determination.

f) Shortages were incorrectly recorded because all imports were in MT but the marble was not weighed in the factory. Instead, stock was taken by measuring the marble blocks, computing their volume and multiplying the volume by density.

g) Processing losses from rough marble to dressed marble was around 10% and processing loss from dressed marble to slabs/tiles was 46% of the total. Demand cannot be raised based assuming that there was clandestine removal by simply applying the standard input output norms (SION).

h) Investigation by the department does not produce any clinching evidence of clandestine removal and sale of huge quantity of 8,351.58 MT of marble blocks. It is also not indicated if the marble block was diverted as such or after conversion to slabs/tiles. This would require at least 1,000 trucks to transport. No buyers were identified, no transporters were identified and no consignment was intercepted and there is money trail of Rs. 24 crores which would have been generated if the marble was sold.

i) There is no information as to how much marble was in closing stock before 23.6.2016, how much was imported, how much was domestically sourced and how much finished goods were exported directly or through third parties. Without these figures, it cannot be determined whether any marble was diverted and if so, how much?

j) It is claimed that all exports made by the appellant through third parties were manufactured from indigenously sourced marble blocks and for this purpose relied on the statements of the exporters.

Some exporters clearly stated that imported marble items were exported and some had given vague replies. The appellants wanted to cross-examine the exporters but the request was denied as recorded in paragraph 5.8 of the impugned order (page 233 of the appeal). Hence, these statements cannot be admitted in evidence.

k) At any rate, none of the statements cannot be relied upon because the statutory provision of section 138B of the Customs Act was not complied with.

l) The exports of marble were got verified abroad through DRI and they were found to be genuine (para 5.7 of the impugned order).

m) The impugned order also discussed some financial transactions between the United and some third parties and has drawn the conclusion that they reflect payments towards clandestinely removed and sold marble. Each of these financial transactions was legitimate and was explained by the United. In any case, none of these statements can be admitted in evidence as the provisions of section 138B of the Customs Act were not complied with.

n) The impugned order holds that most of the exports made through third parties were of 'Fantasy Brown' and these were of Indian origin. Neither the shipping bills nor export invoices were provided as evidence. No expert opinion was taken from either from the Directorate of Mines and Geology of Government of Rajasthan or from the Indian Bureau of Mines to support the case of the department. United had, in fact, imported a number of 'Brown' marble blocks. Shri Ashok Kumar had, in his statement, confirmed that they had also imported 'Fantasy Brown' marble blocks.

o) The performance of every EOU is jointly monitored by the Joint Development Commissioner and the Commissioner of Customs/Central Excise through the Unit Approval Committee and the EOU has to send a periodic report in Appendix 6E for the purpose. All these were done by United.

p) Every EOU has to execute a running bond in B-17 for the duty foregone which is debited whenever goods are imported and credited back once the goods are exported. The bond was regularly debited and credited accordingly. No irregularity was noticed.

q) Some of the third parties had no permission for self-sealing the containers and their export containers were sealed at the port of export. No evidence of any discrepancy was found in the export consignments.

r) Till 13.8.2016, the EOU was under the physical control of the excise officers and all export consignments were sealed by them. No discrepancy was ever reported during this period. To establish this fact, the appellant sought to cross-examine the range superintendents but it was denied (para 5.8.3 of the impugned order).

s) Since the demand cannot be upheld, no penalty can be imposed either on United or other appellants.

t) The impugned order does not also discuss the role of each person to justify individual penalties.

u) The impugned order may be set aside and all appeals may be allowed.

Submissions on behalf of the Revenue

12. Shri Bhagwat Dayal, learned authorized representative for the Revenue made the following submissions.

(i) By purchase order No. 18121 dated 25-06-2018, M/s Source Stone LLC, USA ordered for the purchase of Fantasy Brown marble slabs. From 23.06.2016 to

12.01.2020, the appellant had exported 74879.46 SQF of marble slabs to M/s Source Stone LLC, USA under the cover of 25 invoices. This is concrete evidence that the exported goods were fantasy brown marble.

(ii) United has claimed that they had exported 1584.13 MT of marble slabs from their premises through merchant/third-party exporters. Examination of the documents relied upon, placed at **page no. 308 to 323 of the paper book, Volume 1, establishes that they have sold polished marble slabs of Indian origin to** M/s Mahadev Marble & Granite Limited. The goods exported by M/s Mahadev Marble & Granite Limited were Brown Fantasy Marble of Indian origin to M/s Granite & Marble Depot, USA.

(iii) The same is the case with marble slabs sold to M/s Paradigm Rocks Private Limited, Tamil Nadu. M/s Paradigm Rocks Private Limited had exported Fantasy Brown slabs to M/s Granite Global Distribution, USA **[pages 332 to 340 of the paper book volume 1].**

(iv) M/s Pashupati Exports, Rajasthan have also exported polished brown fantasy marble slabs to the USA **[page 354 to 428 of the paper book volume 1].**

(v) There is evidence of diversion of imported goods and purchase of indigenous goods [para 5.14 (iii) page 231 of the appeal memo) –

- M/s Shree Shyam Stone had deposited an amount of Rs. 1,46,73,365/- in the account of the appellant no. 1, for which no plausible reason was submitted during the investigation proceedings.

- Advance payment of Rs. 28,63,910/- booked as Sundry Creditors in the account of M/s Shree Shyam Stone for the purchase of goods from appellant no. 1, meaning thereby that this was for the purchase of imported marble blocks **[page 232 of the appeal memo].**

- Marble blocks purchased and transported under nine e-way bills **[page 727 & 728 of the paper book volume II]** by M/s Shree Shyam Stone were consigned to the appellant assessee; corresponding invoices were not issued by M/s Shree Shyam Stone to the appellant assessee located at Udaipur **[page 232 of the appeal memo].**

- M/s Shree Shyam Stone did not have any additional place of business in Udaipur, as per the GST registration (page 823 of paper book volume II). The appellant assessee tried to mislead by stating that M/s Shree Shyam Stone did not have premises in Udaipur; therefore, the goods were shipped to their premises for onward transportation.

(vi) In view of the above the appeals and the impugned order may be upheld.

Findings

13. The issues to be decided in these appeals are:

(i) Demand of duty under section 28(4) of the Act with interest under section 28AA of the Act from the United.

(ii) Imposition of penalty under section 114A of the Act on United.

(iii) Imposition of penalties on the other appellants under section 114AA of the Act.

14. Demand of duty in the SCN on 15,104.1 MT of marble blocks imported by United. In the impugned order, however, the Commissioner reduced demand by 919.30 MT to 14,184.84 MT of marble blocks. There is no appeal against the demand on 919.30 MT of marble blocks dropped by the Commissioner in the impugned order.

15. Of the 14,184.84 MT of marble blocks, 6,752.56 MT of marble blocks was admittedly in stock with the appellant

according to SCN itself – part of it as rough marble blocks, part as dressed marble blocks, part as marble slabs of 2 cm and part as marble slabs of 3 cm. Thus, even according to the SCN this stock was lying in the factory of the United, a 100% EOU and it was not diverted. Such being the case, there is absolutely no case to demand duty on this quantity of the marble.

16. As for the rest of the 8,351.58 MT of marble, the case of United is that it had exported the final products directly and also through third parties. However, the demand of duty is made solely for the reason that in some export documents and in the statements of some of the third parties through whom United had exported the goods indicated that the exported slabs were of 'Harmony Brown' which is the marble available only in India and therefore, the exported marble slabs could not have been manufactured out of the imported rough marble blocks. Therefore, it is inferred that the imported marble blocks were diverted and sold in the domestic market and marble slabs of 'Harmony Brown' made of Indian marble was exported thereby violating the actual user condition of the notification.

17. The next question is how has it been held that 'Harmony Brown' marble is available exclusively in India. Reliance for this is placed on Wikipedia and other information available on the internet. Reliance is placed on the statements of various

third parties through which the exports were made that the exported marble was of 'Harmony brown'. Admittedly, United had also procured some marble blocks domestically. The SCN detailed the exports made by United through ten third parties during the relevant period in Table 16 (on page 45 of the SCN) and summarized that 1,584.13 MT of marble was exported by United through these ten parties. Since the total marble procured domestically by United during the relevant period was 196.88 MT (only during 2018-19) way less than the exports through third parties, it was inferred that United had exported indigenous marble blocks/ slabs through third parties and diverted the imported marble blocks (because Harmony brown marble was exported as per the statements which is available only in India).

18. In our considered view, information obtained from the internet cannot be solely relied upon to assert that the Harmony Brown/Fantasy Brown is available only in India and on that ground fasten liability of duty on the United or to hold that it had diverted such a large quantity of marble blocks.

19. Further, the fact that Harmony Brown marble slabs were only exported is sought to be established on the basis of statements of various persons recorded under section 108 of the Act. Such statements are relevant to prove the truth of their contents if they are admitted as evidence as per section 138B of the Act which reads as follows:

Section 138B. Relevancy of statements under certain circumstances. -

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.

20. The impugned order does not say that any of the conditions indicated in section 138B (1) (a) of the Act were present nor was the procedure prescribed under section 138B(1)(b) followed and the statements were admitted by the Commissioner in the impugned order. We are aware that Customs officers are not police officers and hence statements made before them are admissible as evidence but the Commissioner did not admit them as evidence and to admit them, the procedure to be followed is prescribed under section 138B of the Act. Only if the Commissioner admits them as evidence as per section 138B of the Act will they be relevant.

21. Therefore, the demand of duty on 8,351.58 MT of rough marble blocks said to have been diverted into domestic market after exporting marble slabs made of Indian marble cannot be sustained and needs to be set aside.

22. Thus, the demand of duty on either the goods which were still lying in stock or the rough marble alleged to have been diverted after exporting 'Harmony Brown' marble slabs procured domestically cannot be sustained.

Penalty under section 114A

23. Section 114A of the Act reads as follows:

> **Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -**
>
> 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.

24. The case of the Revenue is that United, having imported rough marble blocks, failed to use it for the purpose and thereby failed to fulfil the condition of the exemption notification. There is no evidence that at the time of import, United had not paid duty by collusion or wilful misstatement or suppression of facts. At that time, United was registered as a 100% EOU, it had executed the necessary bond and was

entitled to import rough marble blocks claiming the benefit of the exemption notification. Even if there was a failure, as alleged after importation, it would only mean that United failed to meet the post-import condition of the notification and hence was required to pay the duty. Therefore, section 114A cannot apply to this case by any stretch of imagination. The penalty under section 114A imposed on United, therefore, needs to be set aside regardless of the demand of duty.

Penalty under section 114AA of the Act on the other appellants

25. Section 114AA of the Act provides for penalty under certain conditions and it reads as follows.

> **Section 114AA. Penalty for use of false and incorrect material. -** If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

26. The imports, even according to the Revenue were made after claiming an exemption notification available to the United. There is no mis-declaration in any document in the import. Thereafter, even if United failed to fulfil the post import conditions, it does not mean that there was a mis-declaration, let alone, a knowing or intentional declaration, statement or document being filed. Thus, penalty under section 114AA of the Act imposed on none of the appellants can be sustained.

27. In view of the above, the impugned order is set aside and all the seven appeals are allowed.

(Order pronounced in open court on 27/04/2026.)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

PK