CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

CUSTOMS APPEAL NO. 52297 OF 2021

[Arising out of Order-in-Original No.CC(A)/CUS/D-I/IMPORT/NCH/407/2021-22 dated 17.09.2021 passed by the Commissioner of Customs (Appeals), New Delhi]

Principal Commissioner of Customs, ACC (Import) Commissionerate, **Appellant**
New Customs House, New Delhi-110037

Vs.

M/s. S K Enterprises **Respondent**
First Floor, 4119, Gali No.56-57, Regar Pura,
Karol Bagh, New Delhi-110005

Appearance:
Present for the Appellant : Shri M.K. Shukla, Authorised Representative
Present for the Respondent: None

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:**23/03/2026**
Date of Decision:**28/04/2026**

Final Order No.50809/2026

DR. RACHNA GUPTA

Present is an appeal filed by the Department to assail the order of Commissioner (Appeals) bearing no.407/2021-22 dated 17.09.2021. The appeal pertains to the year 2021. Though the notice of hearing was not initially served upon the respondent/ assessee but as recorded in order dated 03.03.2025, the assessee was duly served with the notice of

hearing of the miscellaneous application alongwith the present appeal. But the appellant still has opted to not to appear. The said miscellaneous application seeking incorporation of additional grounds was also allowed ex-parte. Since then, till date also there have been more than five opportunities, but the assessee/ respondent is repeatedly absent.

2. Vide order dated 18.11.2025, there had been the clarification that no further adjournment shall be granted to the respondent. The said warning has also not caused any change viz-a-viz, the option of the respondent/ assessee to remain absent. Resultantly, we refrain ourselves to adjourn the matter any further and proceed the respondent ex-parte.

3. We have heard the department. Learned Departmental Representative has initially reiterated the facts mentioning that on 05.05.2021, the respondent filed Bill of Entry No. 3832860 declaring the import of 32l Oxygen Concentrators and 3200 Oximeters valued at Rs.14,65,126/-, attracting duty of Rs.72,50,869/- (Order-in-Original Para 1.1). Acting on specific intelligence regarding gross mis-declaration, the consignment was subjected to 100% examination on 06.05.2021, which revealed undeclared and excess items such as 11,210 Pulse Oximeters, 108 Oxygen Concentrators, 41 Portable Oxygen Concentrators, 6700 Infrared Thermometers, 4060 LCD combos, 1150 LED Modules, and 500 Plastic Slide Switches (Order-in-Original, Para 1.2-1.3). These goods were seized under Section 110 of the Customs Act, 1962. Subsequently, valuation was referred to a Government-approved Chartered Engineer who, vide report dated 08.05.2021, re-

determined the assessable value of the consignment at Rs.788,08,956/-, as against the declared value of Rs.714,65,126/- (Order-in-Original Para 1.4). On the same day, the proprietor of the firm, Shri Sahil Khurana, was examined under Section 108, who attributed the mis-declaration to his overseas supplier. However, he accepted the revised valuation and liability (as recorded in Order-in-Original, Para 1.5).

4. The Adjudicating Authority, vide Order-in-Original No. 18/2021-22 dated 10.05.2021, confirmed differential duty demand of Rs.17,60,809/-, confiscated the goods under Sections 111(l) and 111(m), imposed redemption fine of Rs.17,60,000/, and penalty of equal amount under Section 114A (Order-in-Original, Para 1.6). In appeal against the said Order-in-Original, Commissioner (Appeals) vide Order-in-Appeal No. 407/2021-22 dated 17.09.2021, while upholding confiscation and enhanced valuation, reduced redemption fine to Rs.78.80 lakh and set aside penalty under Section 114A (Order-in-Appeal, Para 2.1-2.4). Thereafter, the Committee of Commissioners, vide Review Order dated 07.12.2021, directed the filing of the present appeal before this Tribunal.

5. While pleading for restoring the penalty of order-in-original, learned Departmental Representative mentioned that the plea of importer about mis-declaration to be "supplier's mistake" was neither substantiated by purchase orders nor by correspondence with the foreign suppliers. The only evidence was the self-serving statement of proprietor. Hence, the original adjudicating authority had correctly held the act of appellant to be deliberate mis-declaration attracting provisions of Section 111(l) and 111(m) of the Customs Act and has rightly

confirmed the demand under section 28 (4) of the Act and imposed penalty under section 114A of the Act. However, Commissioner (Appeals) has diluted the findings by reducing the fine and waving the penalty holding that deliberate suppression was not proved.

6. It is submitted that in the Bills of Entry four items i.e., portable Oxygen Concentrator, Infrared Thermometer, LCB combo for mobile phones, LED module parts and Plastic-slide switch (mobile parts) were completely undeclared. The quantity of remaining two goods i.e., oxygen concentrator and pulse Oximeter was mis-declared. The Chartered Engineer assessment has valued the goods at six times higher value than the declared one. There is no reason to discard the said valuation. Only reason for such mis-declaration, therefore, is the evasion of duty and amounts to deliberate suppression as was rightly held by original adjudicating authority. Hence, the original order is prayed to be restored viz-a-viz, the reduction in fine and waiver of penalty.

7. Having heard the department and perusing the record of the appeal memo and the grounds as were taken by the assessee in an application for stay filed under proviso to Section 129 of Customs Act, 1962, it is observed that the Commissioner (Appeals) has imposed redemption of fine, thereby, confirming that the goods were liable to confiscation under 111(l) and 111(m) of the Customs Act, 1962. The said confiscation was initially ordered by original adjudicating authority observing the deliberate suppression on part of the assessee/respondent. Once the confiscation has been upheld, there appears no reason with Commissioner (Appeals) to held that the mis-

declaration was not result of deliberate suppression. The finding of Commissioner (Appeals) that there is no evidence on record about appellant to have willfully mis-declared the goods or to have suppressed any information is, therefore, contrary to Commissioner (Appeal)'s own findings.

8. The original adjudicating authority has clearly appreciated that the only plea taken by the appellant of noticed mis-declaration of quantity and non-declaration of five other products in the consignment is supplier's mistake, but the submissions have not been corroborated by the appellant with any cogent evidence. It is rather observed that the appellant voluntarily accepted to the mis-declaration. Thus, requested for the waiver of the Show Cause Notice and personal hearing. The differential duty with the fine, penalty and interest was paid. The amount of Rs.17,60,809/- was paid on the re-determination assessable value of the imported goods.

9. The penalty under section 114A of the Customs Act is leviable where the duty was short paid. It is observed that at the time of filing the Bills of Entry, the only amount of the duty paid was of Rs.2,50,869/-, as against the re-determined amount of duty which was admitted and paid too. Hence, the duty is rightly held to be short paid.

10. Due to the reasons of mis-statement or suppression of facts, as already observed above, there was mis-declaration resulting into short paid Customs Duty amounting to Rs.17,60,809/-. No evidence for any bonafide for mis-declaration could be brought by the appellant. Resultantly, we hold that the Commissioner (Appeals) has committed an

error while dropping the said penalty and reducing the Redemption fine,when at the same time he has ordered the confiscation of the goods under section 111 of the Customs Act. With these observations, the order under challenged is set aside, consequent thereto, the appeal is allowed.

(Order pronounced on **28/04/2026**)

.**(DR. RACHNA GUPTA)**
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana