

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. IV

CUSTOMS APPEAL NO. 50455 OF 2021

[Arising out of the Order-in-Original No. 03/COMMR/CUS/IND/2019-20
dated 29/07/2019 passed by The Commissioner of Customs, Indore.]

M/s Mungad Strips & Alloy Pvt. Ltd.,Appellant
33-16, Rambali Nagar, Sangam Nagar Road,
Indore (M.P.).

Versus

The Commissioner,Respondent
Central Excise & Customs,
Manik Bagh Palace,
Indore.

APPEARANCE:

None for the appellant.
Shri P.R.V. Ramanan, Special Counsel for the Department

**AND
CUSTOMS APPEAL NO. 50456 OF 2021**

[Arising out of the Order-in-Original No. 03/COMMR/CUS/IND/2019-20
dated 29/07/2019 passed by The Commissioner of Customs, Indore.]

M/s Jiji Industries Ltd.,Appellant
**(Earlier known as M/s Krishna
Profiles Pvt. Ltd.),**
Plot No. 316, Digthan Road,
Gram Sejwaya, Ghatabillod
Distt. Dhar (M.P.).

Present Address

33-34, Rambali Nagar,
Sangam Nagar Road,
Indore.

Versus

The Commissioner,Respondent
Central Excise & Customs,
Manik Bagh Palace,
Indore.

APPEARANCE:

Shri Akshay Anand and Shri Tushar Anand, Advocates for the
appellant.
Shri P.R.V. Ramanan, Special Counsel for the Department

CORAM:

HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51055-51056/2026**DATE OF HEARING : 26.02.2026****DATE OF DECISION: 23.06.2026****P.V. SUBBA RAO**

The order dated 29.07.2019¹ passed by the Commissioner of Customs, Indore in which he decided the proposals made in the show cause notice dated 18.12.2015² issued by the Additional Director General, Directorate General of Central Excise Intelligence³ is assailed by M/s Mungad Strips and Alloys Pvt. Ltd.⁴ and M/s Jiji Industries Ltd.⁵ in these two appeals insofar as it applies to them.

2. The facts which led to the issue of the impugned order are that Mungad had exported goods described as "Aluminium Alloy Conductors" and "Cross Linking Agent" during the period 24.12.2010 to 14.01.2011 under Duty Entitlement Passbook⁶ Scheme of the Directorate General of Foreign Trade⁷ and obtained DEPB scrips in respect of those exports. Jiji Industries had exported Aluminium Alloy Conductors during the same period and had likewise obtained DEPB scrips.

3. DEPB is an Export Incentive Scheme of the DGFT under

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1. impugned order
 2. SCN
 3. DGCEI
 4. Mungad
 5. Jiji
 6. DEPB
 7. DGFT

which the exporter will be entitled to receive scrips as a percentage of the value of the exported goods as per a schedule. The scrips so issued by DGFT can be used to pay duty on any imported goods. It is different from drawback inasmuch as instead of receiving cash as drawback, the exporter receives scrips which can be used to pay import duty or can be transferred to others who can use it to pay import duty on their imports. The DEPB scrips are issued as a percentage on the Free on Board⁸ value of the exported goods. The Directorate General of Revenue Intelligence⁹ and DGCEI initiated investigation into the DEPB scrips issued to Mungad and Jiji and the Shipping Bills based on which they were issued. Based on their investigation and statements of several persons recorded during the investigation, it was felt that the goods were exported at much higher values to receive DEPB scrips of higher values. Accordingly, the investigation was completed and the show cause notice dated 18.12.2015 was issued to the Mungad and Jiji and to others. It culminated in the impugned order in which the Commissioner rejected the transaction value of the exported goods and re-determined their value under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007¹⁰ for the purpose of assessment. He also held that the exported goods were liable to confiscation under Section 113 (d) and

8. FOB

9. DRI

10. Valuation Rules

Section 113 (i) of the Customs Act, 1962¹¹ but did not impose any redemption fine as the goods were not available for confiscation. He denied the DEPB claim as per para 4.3.1 of the Foreign Trade Policy read with Public Notice No. 102 (RE) 2008/04-09-09 dated 15.11.2008 issued by the DGFT and held that customs duty was not paid to the extent DEPB scrips were used and confirmed demand of duty. He further imposed penalties under Section 114A and 114AA of the Act. The Operative part of the impugned order in so far as it pertains to these two appellants is reproduced below :-

"In respect to M/s Krishna Profiles Pvt. Ltd. (now known as M/s Jiji Industries Ltd.) :-

- (i) I reject the declared value of Rs. 689/- to Rs. 913/- per kg. for the goods as detailed in Chart-A Annexed to the SCN and I reject the declared value of Rs. 750/- to Rs. 905/- per kg. for the goods as detailed in Chart-B Annexed to the SCN for Alloy Aluminium Conductor exported by KPPL vide Shipping Bills as mentioned in the Chart A & B under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 read with section 14 of the Customs Act 1962 and redetermine the value thereof as Rs. 400/- kg. in respect of M/s Krishna Profiles Pvt. Ltd. (now known as M/s Jiji Industries Ltd.)
- (ii) I reject the declared description of export goods made by KPPL and order to change from Alloy Aluminium Conductor to Aluminium Bus Bar for the purpose of assessment.
- (iii) Goods with a declared FOB value of Rs. 22,15,55,655/- & Rs. 23,21,88,640/- of KPPL are hereby ordered to be confiscated under section 113 (d) and section 113 (i) of the Customs Act 1962. I find that these exported goods are neither available for confiscation nor covered under bond, hence I do not

11. the Act

impose any redemption fine under section 125 of the Customs Act 1962 on these exported goods.

- (iv) I deny the DEPB claim of Rs. 1,77,24,452/- & Rs. 1,85,75,091/- of KPPL in terms of para 4.3.1 of the Foreign Trade Policy read with Public Notice 102 (RE-2008)/2004-09 dated 05.11.2008 issued by the Director General of Foreign Trade.
- (v) I order for recovery of the Customs duty not paid, to the extent of DEPB credit used i.e. Customs (Import) duty amounting to Rs. 14,24,084/- from the importer i.e. KPPL by invoking the extended period of limitation of 5 years as per proviso to sub-section (1) of Section 28 of the Customs Act, 1962, as it existed prior to 08.04.2011 and under Section 28 (4).
- (vi) I also impose penalty of Rs. 60 crore (Sixty Crore) under Section 114AA of the Customs Act 1962 on KPPL for the willful acts of omission and commission and the role played by them in the subject matter of export of the goods totally valued at Rs. 45,38,68,595/-
- (vii) I also impose a penalty of Rs. 14,24,084/- on KPPL plus amount equivalent to interest payable on such confirmed amount of duty mentioned at (v) of the order till the date of payment of such duty under section 114A of the Customs Act, 1962, for the willful acts of omission and commission and the role played by them in the subject matter of import of the goods which are liable for confiscation.
- (viii) I order for demand and recovery of interest from KPPL as applicable under the provisions of Section 28AA of the Customs Act, 1962 as existed during the relevant period calculated for the period beginning from the date of utilization of the instrument till the date of recovery of such duty.

In respect of M/s Mungad Strips & Alloys Pvt. Ltd. :-

- (i) I reject the declared value of Rs. 816/- to Rs. 2008/- per kg. for the goods as detailed in Chart-C Annexed to the SCN and I reject the declared value of Rs. 1238/- to Rs. 1277/- per kg. for the goods as detailed in Chart-D Annexed to the SCN for Alloy Aluminium Conductor & Aluminium Oxide (Cross

linking Agent) respectively exported by MSAPL vide Shipping Bills as mentioned in the Chart C & D under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

- (ii) I reject the declared description of export goods made by MSAPL and order to change from Alloy Aluminium Conductor to Aluminium Bus Bar and Cross Linking Agent to Aluminium Oxide for the purpose of assessment.
- (iii) Goods with a declared FOB value of Rs. 12,81,12,094/- & Rs. 23,90,01,840/- of MSAPL are hereby ordered to be confiscated under section 113 (d) and section 113 (i) of the Customs Act 1962. I find that these exported goods are neither available for confiscation nor covered under bond, hence I do not impose any redemption fine under section 125 of the Customs Act 1962 on these exported goods.
- (iv) I deny the DEPB claim of Rs. 1,02,48,967/- & Rs. 1,91,20,147/- of MSAPL in terms of para 4.3.1 of the Foreign Trade Policy read with Public Notice 102 (RE-2008)/2004-09 dated 05.11.2008 issued by the Director General of Foreign Trade.
- (v) I order for recovery of the Customs duty not paid, to the extent of DEPB credit used i.e. Customs (Import) duty amounting to Rs. 1,24,362/- from MSAPL by invoking the extended period of limitation of 5 years as per proviso to sub-section (1) of Section 28 of the Customs Act, 1962, as is existed prior to 08.04.2011 and under Section 28 (4).
- (vi) I also impose penalty of Rs. 50 crore (Fifty Crore) under Section 114AA of the Customs Act 1962 on MSAPL for the willful acts of omission and commission and the role played by them in the subject matter of export of the goods totally valued at Rs. 36,71,13,934/-
- (vii) I also impose a penalty of Rs. 1,24,362/- on MSAPL plus amount equivalent to interest payable on such confirmed amount of duty mentioned at (v) of the order till the date of payment of such duty under section 114A of the Customs Act, 1962, for the willful acts of omission and commission and the role played by them in the subject matter of import of the goods which are liable for confiscation.
- (viii) I order for demand and recovery of interest from MSAPL as applicable under the provisions of Section 28AA of the

Customs Act, 1962 as existed during the relevant period calculated for the period beginning from the date of utilization of the instrument till the date of recovery of such duty”.

Submissions of the appellant

4. Learned counsel for the appellant assailed the impugned order and submitted as follows :-

- (i) The appellant had obtained relevant Foreign Exchange realization certificates of the sale proceeds and therefore the allegation of over-valuation of exported goods, rejection of transaction value and re-determination of the value by the Commissioner cannot be sustained.
- (ii) The demand of customs duty to the extent of DEPB scrips were used cannot be sustained since the export goods were cleared after examination and stuffing of export containers was done in the factory premises under proper permission and supervision of the central excise officers or after examination by the customs officers at the Inland Container Depot. Once the goods were exported and the let export orders were issued by the proper officer the shipping bills attained finality against which department had not filed any appeal and the department did not dispute the value of the goods.
- (iii) Once the shipping bills are not challenged by the

Revenue by filing an appeal and LEO has been issued, Revenue cannot ask for re-assessment of already exported consignments.

- (iv) The demand of duty on the imports utilizing the DEPB scrips cannot be sustained.
- (v) The demand of duty in this case is time barred since the extended period of five years under section 28 (4) of the Act also lapsed in this case. The exports were made between 14.10.2010 and 21.12.2010 and the show cause notice was issued on 18.12.2015.
- (vi) The case is mainly made out based on the strength statements recorded by the customs officers and they are not supported by any evidence on record. The impugned order, therefore, be set aside and the appeal may be allowed.

Submissions on behalf of the Revenue :-

5. Learned Special Counsel for the Revenue vehemently supported the impugned order and submitted as follows :-

- (1) The appellants had exported aluminium alloy conductors and cross linking agents during the relevant period declaring exceptionally high values in order to fraudulently obtain DEPB scrips of high value;
- (2) Shri Gaurav Mungad is a Director of G.S. Executive Industries and he admitted in his statement that he

had quoted high values to get additional loan from bank and also to show fake/forged documents to enable him to take Cenvat credit. The impugned order records during the investigation one container said to contain aluminium alloy conductors was intercepted. Test report shows that the article was incomplete or unfinished and did not qualify as aluminium alloy conductor and could only be called aluminium bus whose market price was much lower.

- (3) Both the appellants herein had exported consignments declaring value range in from 700 per kg. to Rs. 2,000/- per kg and had filed shipping bills during the relevant period whereas the goods were found to be a value of Rs. 180/- per kg only.
- (4) Accordingly, the appellants had obtained ineligible DEPB scrips through this mis-declaration. These facts were brought to the notice of DGFT, under section 11 (2) of the Foreign Trade (Development and Regulation) Act, 1992 who imposed penalty of Rs. 11.19 crores on Jiji and Rs. 7.16 crores on Mungad by order dated 31.05.2012.
- (5) Shri Gaurav Mungad, the Director was the key person in the entire fraud.

Findings :-

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

7. The only points that we need to decide in these appeals are whether the Commissioner had, in the impugned order correctly :

- (a) Rejected the transaction value of exported goods and re-determined their value under Rule 8 of the Valuation Rules ;
- (b) Changed the description of the goods in the shipping bills which were also assessed and goods were exported ;
- (c) Ordered the confiscation goods liable for confiscation under section 113 (d) and 113 (i) of the Act ;
- (d) Denied the DEPB claim of the appellants and ordered recovery of customs duty to the extent DEPB credit was used
- (e) Imposed penalties under section 114A of the Act and;
- (f) Imposed penalty under section 114AA of the Act.

8. It is undisputed that the shipping bills were assessed and the goods had already been exported. Assessment of the shipping bills or bills of entry has to be done under section 17 of the Act by the proper officer. After the shipping bills were assessed, the proper officer issued orders under section 51 of the Act permitting clearance of the goods for exportation. Thereafter, the goods were exported. Once the goods are exported, they will no longer be "export goods" under section

2 (19) of the Act, therefore, there cannot be any further assessment of the goods because the assessment can only be of the export goods. Section 2 (19) 17, 50 and 51 of the Act as applicable during the relevant period are reproduced below:-

"SECTION 2. Definitions. — In this Act, unless the context otherwise requires.

(19) "export goods" means any goods which are to be taken out of India to a place outside India;

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.

For the purposes of verification under sub-section (2), [(3) 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 * and in cases other than those where * done by the importer or exporter * 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.

(6) * * *

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 50. Entry of goods for exportation. The exporter of any goods shall make entry — (1) thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export 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.

The exporter of any goods, while presenting a shipping (2) * make and subscribe to a declaration as * bill or bill of export, shall * to the truth of its contents.

The exporter who presents a shipping bill or bill of (3) export under this section shall ensure the following, namely :—

the accuracy and completeness of the information given (a) therein; the authenticity and validity of any document supporting it; (b) and compliance with the restriction or prohibition, if any, (c) relating to the goods under this Act or under any other law for the time being in force.

SECTION 51. Clearance of goods for exportation. Where the proper officer is satisfied that any goods — (1) entered for export are not prohibited goods and the exporter has paid the 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 and loading of the goods for exportation :

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 exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

Where the exporter (2) fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette”.

9. The question which arises is whether the assessment can be modified after the goods have already been exported. Every assessment is an order passed by the proper officer assessing the shipping bill or bill of entry. The process of assessment in respect of imported goods is completed once the proper officer clears the goods for home consumption. In respect of export goods, the process of assessment is completed the moment the proper officer issues an order allowing the goods to be exported. Once the goods are exported they cease to be export goods and, therefore, there cannot be any further assessment of the shipping bill.

10. However, the assessment of the Bill of Entry or shipping bills can be modified through one of the methods available under the law. These are :

- (i) An appeal to the Commissioner (Appeals) under section 128 of the Act ;
- (ii) The notice under section 28 of the Act ;
- (iii) Finalizing of the provisional assessment under section 18 of the Act ;
- (iv) Amendment of the documents under section 149 of the Act ;
- (v) Correction clerical error under section 154 of the Act.

11. Each of the above methods have their own limitations. An appeal before the Commissioner (Appeals) for instance can be filed seeking modification of the assessment but it has to

be filed within the time prescribed. Finalizing of the assessment of Shipping Bill under section 18 would apply only if the original assessment was provisional and not otherwise. A notice under section 28 of the Act can be issued only to recover duty not paid short paid or erroneously refunded. If there is no duty on the imported goods or export goods section 28 will not apply. Section 149 would only apply if the proper officer, in his discretion, authorizes modification of the documents based on any documentary evidence which was available at the time of the export of the goods. This can be done only if the exporter requests and the proper officer is satisfied. Corrections under section 154 are intended only for correcting clerical or arithmetical mistakes and nothing else.

12. It is not the case of either party that the exported goods were liable to any export duty or that the shipping bills were provisionally assessed or that the exporter requested for any amendment to the documents or there were clerical or arithmetical mistakes. Therefore, the only method through which the shipping bills could have been modified was by filing an appeal before Commissioner (Appeals). This has not been done by the department and, therefore, none of the shipping bills could have been modified. Once the proper officer assessed the shipping bills and the LEO was issued, the Commissioner had no power to modify that assessment. Even if he felt that the shipping bills were wrongly assessed, the only proper course available to him would have been to file an

appeal before Commissioner (Appeals). On this ground alone, the impugned order deserves to be set aside because it modifies the assessment of the shipping bills which is the basis of the entire proceedings.

13. However, we also proceed to examine whether the rejection of the transaction value and re-determination of the value under Export Valuation Rules could have had any impact on the DEPB scrips issued to the appellant since the DEPB scrips were not issued as a percentage of the assessable value determined by the customs officer under the Customs Valuation Rules. Admittedly, as per the scheme, DEPB scrips were issued by the DGFT as a percentage of the FOB value. FOB value is not defined in the Customs Act. However, it is understood to be a Free on Board value i.e., the price at which the exporter exported the goods to the importer on the condition that the exporter's responsibility ends when the goods are put on board the vessel or aircraft. All costs and risks thereafter are on the buyer's account. FOB value is one of the INCOTERMS i.e., the international commercial terms. Other INCOTERMS include C&F in which the cost of the transport also should be borne by the exporter and CIF in which both the costs of the transport and transit insurance must be borne by the exporter. In addition to FOB, C&F and CIF there are also other INCOTERMS. In short, FOB value is the transaction value agreed to between the exporter and the overseas buyer. No stranger to the contract can alter this.

14. The question is what is the scope of rejection of transaction and re-determination of value under the Valuation Rules. If the transaction value is rejected, all the proper officer does is to refuse to accept the transaction value as the assessable value for determining duty and re-determines it following some other methods. Likewise, in bill of entry also, if the officer re-determines the value under the valuation rules, he will not be modifying the transaction value. An illustration will make this position clear. If the FOB value as per the agreement of the goods is, say, US \$ 1,000/-, the exporter is only entitled to receive US \$ 1,000/- and the overseas importer has to remit US \$ 1,000/-. If the officer re-determines the value as, say, US \$ 2,000/- based on contemporaneous values, market value, etc. as per valuation rules, export duty has to be paid on US \$ 2,000/- although the transaction value will only be US \$ 1,000/-. The transaction value will not change but the assessable value is what the officer will determine.

15. DEPB scrips are issued based on the FOB value and not based on any value determined by the customs officer. It must be noted that all export incentive schemes come with an obligation to bring remittance of the foreign exchange as per the documents. If the FOB value is US \$ 1,000/- the exporter has to bring in foreign exchange of US \$ 1,000/- and he will be entitled to DEPB scrips also accordingly. The liability of the

exporter to bring in remittance depends on his transaction value and it will not change even the customs officer determine some other value under the Customs Valuation Rules. Therefore, the Commissioner has erred in seeking to deny the DEPB claim of the appellant and in ordering recovery of the duty which was paid using the DEPB scrips. The customs officer has no locus-standi to issue or deny DEPB scrips. These are issued by the DGFT. If a DEPB scrip is issued, the importer can use it. The impugned order cannot be sustained even for this reason.

16. Confiscation of the goods which have already been exported under section 113 (d) and 113 (i) is highly misplaced. Section 113 of the Act provides that certain "export goods shall be liable to confiscation". Export goods, as per section 2 (19) of those goods which are to be taken out of India to a place outside India. Once the goods are taken out of India, they will be exported goods and will no longer export goods. The jurisdiction of the Customs Act extends to the whole of India and not beyond. Therefore, once the goods are exported they move out of the jurisdiction of Customs Act. Therefore, section 113 also does not provide for confiscation of goods which have already been exported. Therefore, the order of the Commissioner confiscating the goods which were already exported is highly mis-placed and is there the scope of the Act.

17. Penalty under section 114A of the Act can be imposed if the duty is not paid or short paid by reason of collusion or any willful statement or suppression of facts and it is ordered to be recovered under section 28. Since we have held against the Revenue on the question of recovery of duty under section 28, the penalty imposed under section 114A also cannot be sustained.

18. Penalty under section 114AA can be imposed for using false or incorrect materials in any declaration statement or document filed under the Act. In this case the appellant had declared certain goods and certain values. Thus, the values declared were its transaction values. According to the appellant it has also realized that the remittance as per these values and obtained bank realization certificates. If the proper officer decides to change the value, it does not mean that the exporter has mis-declared the value. Therefore, the penalty under section 114AA cannot be imposed on the appellant cannot be survive.

19. In view of the above, we find that the impugned order cannot be sustained viewing it from any angle.

20. The impugned order is set aside to the extent it applies to Mungad and Jiji. Both appeals are accordingly allowed with consequential relief to the appellants.

(Order pronounced in open court on 23/06/2026.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

PK