

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75606 of 2021

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AKR/316-317/2021 dated 23.03.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Vinayak Oil & Fat Private Limited

: Appellant

Jalan Complex (Industrial Estate),
29.5 Milestone, N.H. 6, Village – Baniara, P.O.: Begri,
District: Howrah, PIN – 711 411, West Bengal

VERSUS

Commissioner of Customs (Port)

: Respondent

Custom House, 15/1, Strand Road,
Kolkata – 700 001, West Bengal

AND

Customs Appeal No. 75222 of 2022

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AKR/316-317/2021 dated 23.03.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Aegis Logistics Limited

: Appellant

Plot No. – JL 168, Liquid Cargo Park,
Dock Zone, Chiranjibpur,
Haldia – 721 604, West Bengal

VERSUS

Commissioner of Customs (Port)

: Respondent

Custom House, 15/1, Strand Road,
Kolkata – 700 001, West Bengal

APPEARANCE:

Shri Arijit Chakrabarti, Advocate,
Shri Afsar Ali, Advocate
For the Appellant(s)

Shri Faiz Ahmed, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOS. 75679-75680 / 2026

DATE OF HEARING: 25.05.2026

DATE OF DECISION: 11.06.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The Appeal bearing No. C/75606/2021 has been filed by M/s. Vinayak Oil & Fat Private Limited, Jalan Complex (Industrial Estate), 29.5 Milestone, N.H. 6, Village – Baniara, P.O.: Begri, District: Howrah, PIN – 711 411, West Bengal (hereinafter referred to as the “appellant no. 1”) against the Order-in-Appeal No. KOL/CUS(Port)/AKR/316-317/2021 dated 23.03.2021 challenging the upholding of the order of confiscation of the goods viz. 45.189 MTs of Crude Degummed Soya Bean Oil (CDSBO) of edible grade valued at Rs.22,85,958/- along with imposition of redemption fine of Rs.6,00,000/- thereon and the imposition of penalty of Rs.10,38,396/- under Section 114A of the Customs Act, 1962.

1.1. The Appeal bearing No. C/75222/2022 has been filed by M/s. Aegis Logistics Limited, Plot No. – JL 168, Liquid Cargo Park, Dock Zone, Chiranjibpur, Haldia – 721 604, West Bengal (hereinafter referred to as the “appellant no. 2”) against the Order-in-Appeal No. KOL/CUS(Port)/AKR/316-317/2021 dated 23.03.2021 challenging the remanding of the case, insofar as it pertains to the appellant no. 2, by the Ld. Commissioner of Customs (Appeals), Custom House, Kolkata to the lower authority for de novo adjudication.

2. As both the appeals emanate from the same order, they are taken up together for decision by way of a common order.

3. The facts of the case are that the M/s. Vinayak Oil & Fat Pvt. Ltd. (appellant no. 1 herein) having address at Jalan Complex, (Industrial Estate), 29.5 Milestone, N.H 6, Village Baniara, P.O-Begri, Distt-

Howrah-711411 filed a Pumping Guarantee No. 1374/OIL/18P dated 27.11.2018, as amended on 30.11.2018, of the Vessel M.T Andrea Victory (Rotation No. 2210791/2018) through their representative CHA M/s Soma Clearing Agents Pvt. Ltd (the Customs Broker) for discharge of 1500 MT of Crude Degummed Soya Bean Oil (CDSBO) of edible grade imported in-bulk to discharge in Tank No. 403 of M/s Aegis Logistics Ltd at Plot No. JL 168, Liquid Cargo Park, Dock Zone, Chiranjibpur, Haldia-721604, West Bengal (appellant no. 2 herein).

4. The vessel M.T. Andrea Victory, Import Rotation No. 2210791/2018 Voy No. 03 carrying the oil viz. CDSBO arrived at Haldia Port with 14240.188 M.T. of CDSBO for 7 importers including the appellant no. 1. The said oil was unloaded in the tank and on measurement, it was found that 1,453.650 M.T. had been received in the tank in respect of the appellant no. 1. Accordingly, the appellant no. 1 filed the Bill of Entry No. 9224021 dated 12.12.2018 for the clearance of the said quantity of 1,453.650 M.T. on payment of import duty and placed 5 tankers, as advised by the custodian, namely, M/s. Aegis Logistics Ltd. (the appellant no. 2).

5. The Bill of Entry quantities were cleared in 3 tankers when custodian/appellant no. 2 informed the appellant no. 1 that around 49.330 M.T. oil was still in the tank. The appellant no. 1 informed the custodian/appellant no. 2 not to release the tanker till the payment of Customs duty for the excess quantity was also made. Thereafter, the Customs Authorities detained the goods. On request of the appellant no. 1, the said goods were cleared on execution of a Bond of

Rs.7,00,000/- and Bank Guarantee for the differential Customs duty of Rs.10,38,396/-.

5.1. Subsequently, proceedings were initiated by issuance of a Show Cause Notice dated 13.05.2019 proposing confiscation of the 45.189 MTs of CDSBO imported by the appellant no. 1/importer and penal action under Section 112(a) and 112(b) read with 114A of the Customs Act, 1962 on both the appellants.

5.2. The Id. adjudicating authority, by way of the Order-in-Original No. KOL/CUS/ADC/92/SIB/2019 dated 31.10.2019 confiscated the goods in question under Section 111(j), 111(i) and 111(m) of the Customs Act, 1962 with the option to the appellant no. 1 to redeem the same on payment of redemption fine of Rs.6,00,000/- in terms of Section 125 of the Act, and appropriated the amount of Rs. 10,38,396/- deposited by the importer against the Customs duty involved in respect of the excess quantity of 45.189 MTs of CDSBO found. The Id. adjudicating authority also imposed penalties equivalent to the amount of Customs duty involved in respect of such excess quantity found, of Rs.10,38,396/- each, on the appellant no. 1 as well as the appellant no. 2, under Section 114A of the Customs Act, 1962.

5.3. The appellants challenged the above order before the Ld. Commissioner (Appeals), who, vide the impugned order, rejected the appeal filed by the appellant no. 1. As far as the appeal filed by the appellant no. 2 is concerned, he remanded the matter to the lower authority for de novo consideration, after setting aside the penalty imposed under Section 114A on the said appellant.

5.4. Aggrieved by the order of confiscation of goods and the imposition of redemption fine and penalty on them, as upheld vide the impugned order, the appellant no. 1 has filed the Appeal bearing No. C/75606/2021. Aggrieved by remanding of the matter to the lower authority to the extent it pertains to the appellant no. 2 vide the impugned order, the appellant no. 2 has preferred the Appeal bearing No. C/75222/2022.

6. In respect of the appeal filed by M/s. Vinayak Oil & Fat Pvt. Ltd. / appellant no. 1, it has been submitted by the Ld. Counsel for the appellants that the order passed by the authorities below is not maintainable in law as the goods found in excess were not removed without payment of duty; rather, immediately on detection, the appellant no. 1 intimated the custodian not to remove the tankers without payment of duty for the excess quantity. It is thus their contention that it cannot be said that the goods were meant for clearance without payment of duty and hence, the goods are not liable for confiscation; the seizure of the goods and imposition of penalty is, therefore, bad in law. It is further contended on behalf of the appellant no. 1 that the imposition of penalty is also travelling beyond the scope of the Show Cause Notice; that while the Show Cause Notice proposes for imposition of penalty under Section 112(a) and 112(b) read with 114A of the Customs Act, 1962, the penalty has been imposed under Section 114A of the Customs Act, 1962 which is not permissible in terms of the decision in the case of *Schrader Duncan Ltd.* reported in 2010 (251) ELT 290 (Tri – Mum.) Hence, it is the case of the appellant no. 1 that the order passed by the authorities below is liable to be set aside.

6.1. As regards the appeal filed by M/s. Aegis Logistics Ltd. / appellant no. 2, it is the submission of their Counsel that they are the custodian of the cargo and have not indulged in removal of the goods without payment of appropriate customs duties; Section 114A is imposable only when duty liability is fastened; that in this case there is no duty demanded from the appellant no. 2 and hence, penalty under Section 114A of the Customs Act is not imposable on them. It is the submission of the appellant no. 2 that though the Id. lower appellate authority has taken cognizance of the above fact and set aside the penalty imposed on the appellant no. 2 under Section 114A vide the impugned order, the Id. lower appellate authority has travelled beyond the scope of the appeal before him by remanding the matter to the lower authority on the basis of the observation that penalty may be imposed under either Section 112(a) & (b) or Section 114A as proposed in the Show Cause Notice; that Section 128A of the Customs Act, 1962 provides that matters can be remanded back by the Ld. Commissioner (Appeals) only under certain circumstances, none of which apply to the facts of the instant case; that the Id. first appellate authority ought to have simply allowed the appellant's appeal instead of remanding the same to the adjudicating authority thereby giving liberty to the adjudicating authority to revisit imposition of penalty under Section 112(a) & (b). Thus, it is the contention of the appellant no. 2 that the Id. first appellate authority has erred in remanding the matter to the lower authority for fresh adjudication, which is liable to be set aside.

7. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

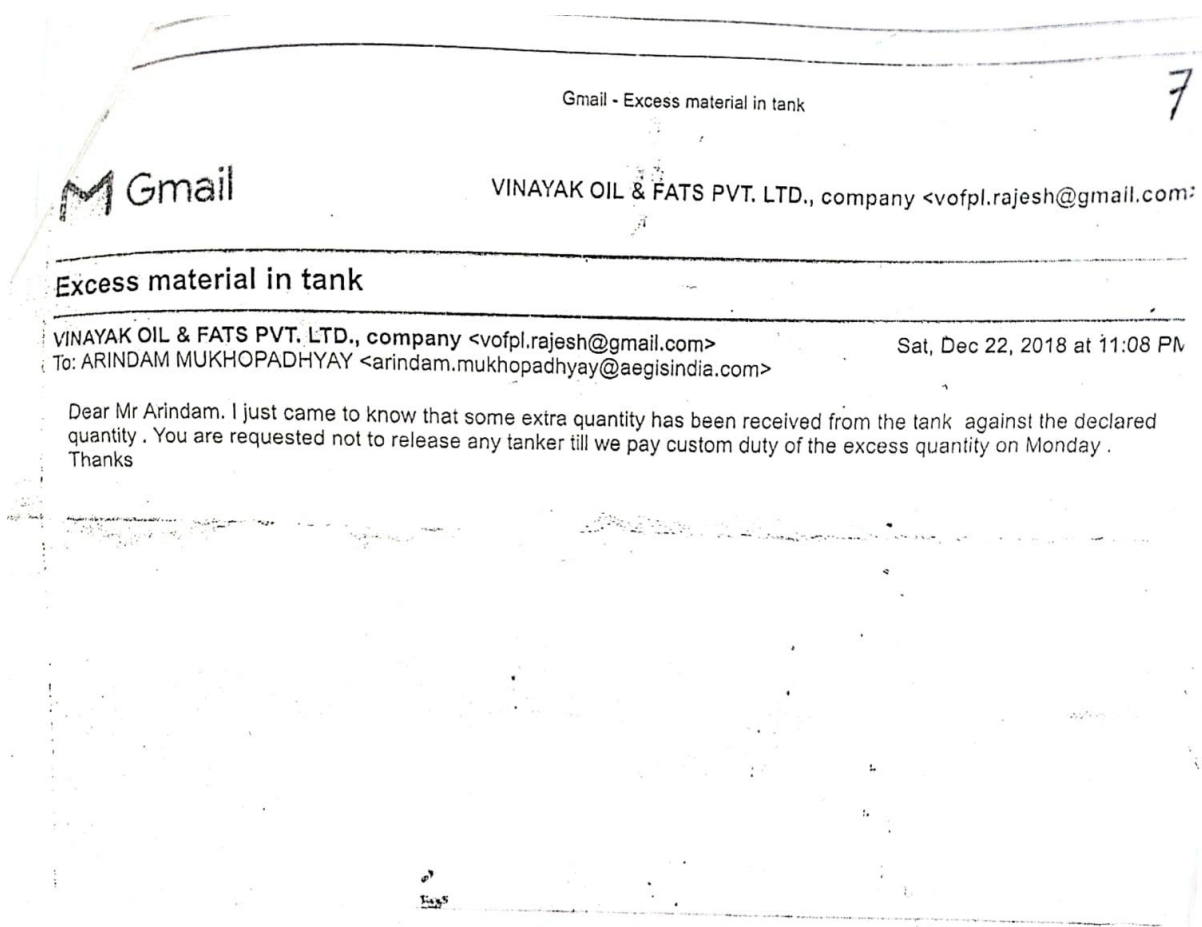
8. Heard both sides and perused the documents presented before us.

9. We find that the appellant no. 1, namely, M/s. Vinayak Oil & Fat Pvt. Ltd., filed the Bill of Entry No. 9224021 dated 12.12.2018 for clearance of 1453.650 M.T. of Crude Degummed Soya Bean Oil (CDSBO) on payment of duty upon import. It was informed by the custodian of the goods/appellant no. 2, namely, M/s. Aegis Logistics Ltd. that a quantity of 49,330 M.T. of oil was still in the tank. Accordingly, the appellant no. 1 brought three (03) tankers in the Customs Bonded Area.

10. From the records, it can be observed that the appellant no. 1 had not made any attempt to clear the goods in question which were found to be in excess. It is also a fact that the appellant no. 1 had informed the custodian/appellant no. 2 not to release the said tanker(s) till the payment of customs duty was made for the excess quantity, which further proves the bona fides of the appellant no. 1. We find that the above claim of the appellant no. 1 is also supported by the e-mail communication dated 22.12.2018, a copy of which has been placed on record before us. For ready reference, the extract of the said e-mail is reproduced hereunder: -

Appeal No.: C/75606/2021-DB

& C/75222/2022-DB



10.1. From the email extracted above, we find that the appellant no.1 has categorically instructed the custodian/appellant no. 2 not to release the said tanker(s) till the payment of customs duty was made for the excess quantity. Thus, we find merit in the claim of the appellant no. 1 that they did not make any effort to clear the excess quantity of goods found in the vessel. It is also on record that the goods found in excess were finally cleared on payment of duty. Thus, we hold that the goods in question are not liable for confiscation. Accordingly, we hold that the question of imposition of redemption fine does not arise in this case. In view of the above, we set aside the order of confiscation of the goods and the consequent imposition of redemption fine vide the impugned order, being unsustainable in law.

11. Regarding the imposition of penalty on the appellants, we find that the penalties have been imposed on them under Section 114A of the Customs Act, 1962. The observation of the Id. adjudicating authority for the purpose of imposition of penalty on the appellants has been recorded in paragraph 49 of the Order-in-Original dated 31.10.2019, which is reproduced below: -

"49. As per circumstances and available evidence, I hold that the custodian and the importer apparently had prior knowledge of presence of excess quantity of crude oil in the shore Tank and were acting together to remove such excess quantity of the crude oil without payment of Customs duty as neither the importer nor Custodian informed the Customs Department about presence of such excess quantity of the non-duty paid edible Crude oil, before detection by Customs. The reply and explanation submitted by the Custodian is not tenable and are afterthought in order to justify their act. It has been established that the Custodian removed 45.189 MTs of crude oil, stored in the Shore Tank, for which applicable Customs duty were not paid and Customs clearance by proper officer of the Customs were not granted, to the Tankers trucks which were provided by the importer. Hence, it is a case of violation of section 111(j), 111(1) & 111(m) of Customs Act, 1962 read with Foreign Trade Development and Regulation Act, 1992 thus rendering the seized 45.189 MT of Crude Degummed Soya Bean Oil (CDSBO) of edible grade, for confiscation under the section 111(j), 111(1) & 111(m) of Customs Act, 1962. The importer namely M/s Vinayak Oil & Fats Pvt. Ltd and the Custodian M/s Aegis Logistics Limited are also liable to penal action under section 112 of the Customs Act, 1962."

12. In this regard, we find that the observation of the Id. adjudicating authority in the above mentioned paragraph is factually incorrect. We note that the appellant no. 1 has not made any effort to clear the excess quantity of crude oil (CDSBO) found in the shore tank. No corroborative evidence has been brought on record to prove collusion or any wilful mis-statement or suppression of facts on the part of the appellants either. In fact, it is on record that the custodian of the goods, M/s. Aegis Logistics Ltd., the appellant no. 2 herein, had notified the excess quantity available in the shore tank and the appellant no. 1, on being notified, informed the custodian/appellant no. 2 not to release the tanker till payment of customs duty for the excess quantity was made. Therefore, the evidence available on record indicates that there is no *mens rea* on the part of the appellants herein to clear goods without payment of duty. Therefore, we find that the provisions of Section 114A of the Customs Act are not applicable to the facts and circumstances of the present case and no case has been made out by the Revenue to justify the imposition of penalty under the said Section on the appellants.

12.1. In view of the above, we set aside the penalty, equal to the customs duty for excess quantity of goods, imposed on the appellant no. 1 under Section 114A *ibid*.

12.2. For the same reasons, we also find that no penalty is imposable on the appellant no. 2 under Section 114A of the Act. We do not find any merit in the order of remand passed by the Ld. Commissioner of Customs (Appeals) in respect of the appellant no. 2 herein. Accordingly, the same stands set aside.

Appeal No.: C/75606/2021-DB
& C/75222/2022-DB

13. In the result, we set aside the impugned order and allow the appeals filed by both the appellants, with consequential relief, if any, as per law.

(Order pronounced in the open court on **11.06.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd