CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60412 of 2024

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-98-2024 dated 12.03.2024 passed by the Commissioner (Appeals), CGST, Ludhiana]

Amandeep Singh Bagri ......**Appellant**
Prop of Mojos Impex International,
Street No. 1, New Model Town, Sahnewal,
Ludhiana, Punjab 141120

VERSUS

Commissioner of Customs, Ludhiana ......**Respondent**
Customs House, ICD GRFL Complex,
G.T. Road, Sahnewal,
Ludhiana, Punjab 141120

APPEARANCE:

Mr. Naveen Bindal and Mr. Bharat Jain, Advocates for the Appellant

Mr. Anurag Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60416/2026

DATE OF HEARING: 20.03.2026
DATE OF DECISION: 02.07.2026

S. S. GARG :

The present appeal is directed against the impugned Order-in-Appeal No. LUD-EXCUS-001-APP-98-2024 dated 12.03.2024 passed by the Commissioner (Appeals), CGST, Ludhiana whereby the learned Commissioner (Appeals) has dismissed the appeal of the

Appellant and upheld the Order-in-Original imposing the penalty of Rs.10,00,000/- under Section 112(a)(i) of the Customs Act, 1962.

2. Briefly stated facts of the present case are that-

a) M/s Shreyans Appearls & Leatherites, Ludhiana, had filed a Bill of Entry No. 3940459 dated 13.05.2021 through Customs Broker Shri Amandeep Singh Bagri, Ludhiana (F-Card of M/s Mojos Impex International) for clearance of 1120 bags of dry dates having declared assessable value of Rs.19,04,892/-. On 19.05.2021, the examination of the goods was conducted in the presence of Customs Broker and authorized representative of the importer, Sh. Jagjeet Singh (H-Card of M/s Mojos Impex International) and two independent witnesses and the officers of import shed. The examination proceedings were enumerated in the Panchnama dated 19.05.2021.

b) During the examination, it was noticed that although the packing material was same for all the imported goods but there was stark difference in the shape of the bags placed at the front of the containers than those placed behind. Therefore, one such bag was fetched from behind the front four to five layers of bags and on opening the same, it was found to contain cartons of ESSE brand cigarettes. Accordingly, the containers were ordered to be completely de-stuffed for detailed examination of the imported goods and on complete de-stufling of the containers, a large quantity of cartons of cigarettes concealed behind the bags of dry dates were found. The packing material of both i.e. dry dates and cigarettes was the same, so as to hoodwink the Customs officers and smuggle in large quantities of prohibited goods i.e. cigarettes.

c) The examination of the containers revealed that apart from the bags of dry dates, following prohibited goods i.e. cigarettes were also found:

(i) 120 cartons of ESSE brand having 12,00,000 sticks of 100 mm length.
(ii) 20 cartons of Benson & Hedges brand having 2,00,000 sticks of 84 mm length.
(iii) 110 cartons of Gudang Garam brand having 15,84,000 sticks of 84 mm length.

d) The said cigarettes were not declared in the import document. The Import of cigarettes into India is prohibited and trade & commerce of cigarettes in India is regulated by the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ('COTPA, 2003') and related Rules. The import of cigarettes is restricted in terms of General Note 3 to import policy where under the import of cigarettes or any other tobacco product shall be subject to the provisions contained in the Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2018 (as amended from time to time) as notified by the Ministry of Health & Family Welfare. The cigarettes were found without statutory pictorial & Textual warning. Therefore, on such reasonable belief that the goods were liable for confiscation under Section 111 of the Customs Act, 1962, the goods imported vide impugned Bill of Entry were seized under Section 110 of Customs Act vide Seizure Memo dated 19.05.2021.

e) Investigations were conducted and during the investigations, searches were also conducted at various locations. Statements of various persons related to the case were also recorded under Section 108 of the Customs Act, 1962. Upon completion of the investigation, a show cause notice dated 13.05.2022 was issued to the Appellant Shri Amandeep Singh Bagri, who was working as a CHA and was a F-Card holder under the name M/s Mojos Impex International. In the said show cause notice, it was alleged that the Appellant has failed to perform his duties as a Customs Broker as mandated under the Regulation 10 of Customs Brokers Licensing Regulations, 2018 (in short 'CBLR').

f) After following the due process, the learned Original Authority vide the Order-in-Original dated 18.04.2023 imposed the penalty of Rs.10,00,000/- on the Appellant under Section 112(a)(i) of the Customs Act, 1962. Being aggrieved by the said Order-in-Original, the Appellant filed an appeal before the Commissioner (Appeals), who vide the impugned Order-in-Appeal, has rejected the same. Hence the present appeal.

3. Heard both sides and perused the material on records.

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law, and binding judicial precedents.

4.1 The learned Counsel further submits that the entire proceedings were initiated and concluded against the Appellant based on allegations of contravening Regulation 10 of the CBLR. He further submits that same allegation had already been adjudicated in prior proceedings by the Commissioner of Customs, Ludhiana vide order dated 15.07.2021, whereby the Commissioner of Customs revoked the suspension of licence of the Appellant by holding that there is no *mens rea* on the part of the Appellant and no evidence of guilty mind is available on record against the Appellant. He further submits that vide the said order, the conduct of the Appellant was examined in details and it was found that the Appellant had not violated Regulation 10 the CBLR. He also submits that the order dated 15.07.2021 has attained finality as the Department has not challenged the same; therefore, in the present proceedings, the allegation of contravention of Regulation 10 of the CBLR cannot be sustained.

4.2 The learned Counsel further submits that vide show cause notice, the appellant was called upon for penalties under Sections 112 and 117 Customs Act, 1962 as well as under the CBLR, but the Department did not specifically mention as to which regulation of the CBLR had been violated by the Appellant. He further submits that the Adjudicating Authority did not impose any penalty under the CBLR, instead, a penalty was imposed under Section 112(a)(i) of the Customs Act, 1962 which provides for penalties to acts or omissions that render goods liable for confiscation under Section 111 of the Customs Act, 1962. He further submits that a penalty under Section

112 of the Customs Act, 1962 can only be imposed if there is a violation of Section 111 of the Customs Act which makes the goods liable for confiscation. He also submits that Section 112 of the Customs Act is not to be applied just because there is a contravention of the CBLR.

4.3 The learned Counsel further submits that a perusal of the impugned Order-in-Appeal only reveals that the present case relates to contravention of CBLR and same does not meet the conditions of Section 111 of the Customs Act and therefore, the penalty under Section 112(a)(i) Customs Act is not legally sustainable. He further submits that there is no allegation or finding in the impugned Order-in-Appeal that the Appellant committed any act, omission or abetment that rendered the goods liable for confiscation under Section 111 of the Customs Act, and in the absence of such an allegation or finding, the imposition of a penalty under Section 112 of the Customs Act is not sustainable as this provision applies only when there is a direct violation that results in goods being subject to confiscation under Section 111 of the Customs Act.

4.4 In support of his above submissions, the learned Counsel places reliance on the following case-laws:

- **M/s Siddhi Diamond vs. CC (Prev.), Kolkata - 2025 (1) TMI 1140 – CESTAT Kolkata**
- **M/s Birendra Kumar Gupta vs. CC (Prev.), Kolkata – 2025 (1) TMI 959 – CESTAT Kolkata**
- **M/s Exim Services vs. CC, Ludhiana – 2021 SCC Online CESTAT 14**
- **M/s GND Cargo Movers vs. CC, New Delhi – 2025 (6) TMI 375 CESTAT – New Delhi**

5. On the other hand, the learned Authorized Representative for the Department reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record as well as the case-laws relied upon by the learned Counsel for the Appellant. We find that the only allegation made in show cause notice against the Appellant is that the Appellant has contravened Regulation 10 of the CBLR and has not performed his duties expected of him under the CBLR.

7. Further, we find that as for as conduct of the Appellant under the CBLR is concerned, the Commissioner of Customs, vide order dated 15.07.2021 in prior proceeding where the Appellant's CHA licence was suspended, has examined the Appellant's role in the entire transaction and has revoked the suspension of the licence of the Appellant by giving detailed findings. The relevant findings of the Commissioner of Customs in the **order dated 15.07.2021** are reproduced herein below:

> "**17.** An element of *mens rea*, or any direct or indirect involvement attributable to the Customs Broker through active knowledge or connivance is required to be proved in a proceeding for revocation of licence of a Customs Broker. In the instant case, I find that there is no corroborative evidence or statement of anybody that the Customs Broker had information, knowledge or has connived in the alleged misdeclaration. The Customs Broker merely acts as a facilitator or agent for carrying out import operations. Thus, it appears that there is no reason to attribute any negligence to the Customs Broker in the instant case. In the present case as well, the Customs Broker has exercised due diligence as all the importers were existing and had valid documents for import. The Customs Broker could not have known about the ingredients of import consignment. It was only on the basis of the

> documents produced by the importer that the Customs Broker had processed the Bill of Entry. There is no *mens rea* is involved and no evidence of guilty mind is available on record."

8. Further, we find that vide the impugned order, the learned Commissioner (Appeals) has upheld the penalty imposed on the Appellant under Section 112(a)(i) of the Customs Act, which can only be imposed on basis of acts or omissions that render goods for confiscation under Section 111 of the Customs Act. Further, we also find that the penalty under Section 112 of the Customs Act can only be imposed if there is a violation of Section 111 of the Customs Act which makes the goods liable for confiscation; whereas, in the present case, nothing has been recorded in the impugned order about the violation on the part of the Appellant under Section 111 of the Customs Act.

9. Further, we find that both the lower authorities have alleged that there is a violation of the CBLR on the part of the Appellant, but no penalty has been imposed on the violation of the CBLR. In the absence of any act or omission or abetment that renders the goods liable for confiscation under Section 111 of the Customs Act, the imposition of a penalty under Section 112(a)(i) of the Act is not sustainable because this provision only applies when there is a direction violation that results in goods being subject to confiscation under Section 111 of the Act. In this regard, we may refer to the decision of the Tribunal in the case of **M/s Exim Services** (supra), wherein the Tribunal, after following the ratio of the decision of

Principal Bench in the case of *P.S. Bedi & Company vs. CC [2001 (133) ELT 86 (Tri. Del.)*, has held as under:

> "**10.** Further, in the case of *P.S. Bedi & Company* (supra) this Tribunal again has observed as under:-
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> > *5. Considering the submissions, I not that, before proceeding to impose a penalty on the CHA under Section 112(a) of the Customs Act, it is incumbent on the Departmental authorities to record a finding in the first instance that some commission or omission of the CHA had rendered the goods confiscable. Such a finding is not forthcoming in the order of the Deputy Commissioner or that of the Commissioner (Appeals). In the absence of such a finding, penalty cannot be imposed under Section 112(a) of the Act. The adjudicating authority has not even mentioned the provision of law under which the penalty was imposed. The order of the adjudicating authority has been upheld by the lower appellate authority. This is a clear case of non-application of mind on the part of the Commissioner (Appeals), to the findings of the adjudicating authority. I further observe that, apart from stating that the case law relied on by the appellant is not relevant the Commissioner (Appeals) has not stated as to why the case law was not relevant. The impugned order is, therefore, not a speaking order on the point.*
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> **11.** Further, the case laws relied by the Ld. AR are not relevant to the facts of this case as in those case, it is in the knowledge of CHA regarding the description of goods before filing the shipping bills. There is no allegation in the show cause notice in respect of the test certificate produced by the appellant. The mere allegation is that the appellant being an experienced person should know the difference between prime and secondary/defective material. The act of filing the test certificate shows that the appellant has no mens rea and filed the documents being a *bonafide* facilitator.
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> **12.** In view of the above discussion, no penalty is imposable upon the appellant, therefore, the penalty imposed on the appellant under Section 112 along with 114AA of the Customs Act, 1962 is set-aside and the appeal is allowed with consequential relief, if any."

11. In view of our discussion above, we are of the considered opinion that impugned order, imposing the penalty on the Appellant under Section 112(a)(i) of the Customs Act, 1962, is not sustainable in law, therefore, we set aside the same by allowing the appeal of the Appellant.

(Order pronounced in the open court on 02.07.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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