CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70843 of 2024

(Arising out of Order-In-Original No. 02-PC-NOIDA-CUS-2024-25, dated - 05/06/2024passed by Commissioner, CGST & Central Excise, Noida)

Mr. Ajit Singh **.....Appellant**
S/o of Sh. Chandra Bhan, R/O 93,
Mangolpur Khurd, New Delhi, 110083

VERSUS

Commissioner, CGST & Central Excise, Noida
....Respondent
Concor Complex, P.O. Container Depot, Gautam Budh Nagar,
Greater Noida, U.P. 201311

WITH

Customs Appeal No.70246 of 2026

(Arising out of Order-In-Original - 02-PC-NOIDA-CUS-2024-25, dated - 05/06/2024passed by Commissioner, CGST & Central Excise, Noida)

M/s V V Impex **.....Appellant**
Sdf-C-06(B), SEZ, Gautam Buddha Nagar, Uttar Pradesh 201305

VERSUS

Commissioner, Customs, Noida **....Respondent**
Concor Complex, P.O. Container Depot, Gautam Budh Nagar,
Greater Noida, U.P. 201311

AND

Customs Appeal No.70247 of 2026

(Arising out of Order-In-Original - 02-PC-NOIDA-CUS-2024-25, dated - 05/06/2024passed by Commissioner, CGST & Central Excise, Noida)

Sumer Chand Verma **.....Appellant**

R/o Ak-77, Shalimarbagh, New Delhi, 110088

VERSUS

Commissioner, Customs, Noida **....Respondent**
Concor Complex, P.O. Container Depot, Gautam Budh Nagar,
Greater Noida, U.P. 201311

APPEARANCE:

Shri Gaurav Prakash, Advocate for the Appellant No.1
Shri Kartikeya Narayan, Advocate for the Appellant No.2 & 3
Shri Manish Raj, Authorised Representativefor the Respondent

CORAM: **HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.70278-70280/2026

DATE OF HEARING : 07.07.2026
DATE OF DECISION : 11.08.2026

K. ANPAZHAKAN:

The present appeal has been filed by M/s V. V. Impex (Appellant No.1) against the Order-In-Original No. 02-PC-NOIDA-CUS-2024-25, dated 05.06.2024 passed by Commissioner, CGST & Central Excise, Noida wherein penalty of Rs.79,99,182/- has been imposed against the Appellant Company.

Shri Sumer Chand Verma (Appellant No.2) has filed appeal against the same Order-In-Original No. 02-PC-NOIDA-CUS-2024-25, dated 05.06.2024 passed by Commissioner, CGST & Central Excise, Noida wherein penalty of Rs.6,00,000/- has been imposed on him under Section 112 (a) & (b) (i) of the Customs Act, 1962.

Shri Ajit Singh (Appellant No.3) has filed appeal against the same Order-In-Original No. 02-PC-NOIDA-CUS-2024-25, dated 05.06.2024 passed by Commissioner, CGST & Central Excise, Noida wherein penalty of Rs.6,00,000/- has been imposed on him under Section 112 (a) & (b) (i) of the Customs Act, 1962.

As all these appeals have been filed against the same Order-in-Original, all are taken up together for decision by a common order.

2. The facts of the case are that M/s V. V. Impex (Appellant No.1) is an approved unit of Noida Special Economic Zone (NSEZ) engaged in manufacturing of gold and Silver jewellery.

On 29.06.2021, an information was received from the NSEZ gate security regarding alleged theft incident in the premises of the Appellant-Company at SDF-C-06(B), NSEZ Noida. Accordingly, a team of two preventive officers lead by an Appraiser visited the unit and sealed three safes in the premises, as the authorized persons of the unit was not present. A Panchnama dated 29.06.2021 was also drawn to this effect before independent witnesses. The statement of skilled labourer, Shri Ramakant was also recorded on 29.06.2021.

2.1. Subsequently, stock taking was conducted and it was found that there was a shortage of 46222.748 grams of Silver (.999) and 12000 grams of gold in the stock balance. Accordingly, investigation was initiated against the Appellant-Company and others. As the Appellants were not in a position to explain the reasons for the shortage, it was presumed that the Appellant has diverted the impugned goods procured without payment of customs duties and hence they are liable to pay customs duty payable on the goods found short during the stock taking. Accordingly, various statements were recorded from the concerned persons in the unit.

2.2. On completion of the investigation, a Show Cause Notice dated 24.06.2023 was issued demanding customs duty payable amounting to Rs.79,99,182/- alongwith interest. Show Cause Notice also proposes penalties on various persons. It was also proposed to appropriate an amount of Rs.79,99,179/- and Rs.1,30,178/- deposited by the Appellant against their duty liability.

2.3. On adjudication, the learned Adjudication Authority confirmed the demand of customs duty alongwith imposition of penalties and passed the following order:-

ORDER

In view of the foregoing discussion and findings, I pass the following order:-

a. I confirm the demand of Customs Duty amounting to 79,99,182/-[Rs Seventy Nine Lakhs Ninety Nine Thousand One Hundred Eighty Two only] from M/s V.V.Impex (Noticee-1) under the provisions of Section 28(4) of the Customs Act, 1962. I order appropriation of the amount of 79,99,179/- deposited by the Noticee-1 vide Challan No. 9022, 9023, 9024, all dated 31-07-2021 against the said confirmed demand of duty.

b. I confirm the demand of interest at applicable rate on the above confirmed demand of Customs duty from M/s V.V. Impex (Noticee-1) under Section 28AA of the Customs Act, 1962. I order appropriation of the amount of 1,30,178/- deposited vide Challan No. 9027 dated 31-07-2021 against the said confirmed demand of interest.

c. I impose penalty of 79,99,182/-[Rs Seventy Nine Lakhs Ninety Nine Thousand One Hundred Eighty Two only] upon M/s V.V. Impex (Noticee-1), through Shri Vikas Verma (Noticee-2), Proprietor of M/s V.V. Impex (Noticee-1), under the provisions of Section 114A of the Customs Act, 1962.

d. I do not impose penalty upon M/s V.V. Impex (Noticee-1) and Shri Vikas Verma (Noticee-2), Proprietor of M/s V.V. Impex (Noticee-1)under the provisions of Section 112 (a) & (b) of the Customs Act, 1962 in view of the penalty imposed under Section 114A of the Customs Act, 1962.

e. I impose penalty of Rs 6,00,000/- (Rs Six Lakhs only) upon Shri Sumer Chand Verma (Noticee-3), under the provisions of Section 112(a) & (b) (i) of the Customs Act, 1962.

f. I impose penalty of Rs 6,00,000/- (Rs Six Lakhs only) upon Shri Ajit Singh (Noticee-4), under the provisions of Section 112(a) & (b) (i) of the Customs Act, 1962.

g. I impose penalty of Rs 10,00,000/- (Rs Ten Lakhs only) upon Shri Vikas Verma (Noticee-2), Proprietor of M/s V.V. Impex (Noticee-1) under the provisions of Section 114AA of the Customs Act, 1962.

h. I drop the proposal to impose penalty upon Shri Sumer Chand Verma (Noticee-3), under the provisions of Section 114AA of the Customs Act, 1962.

i. I drop the proposal to impose penalty upon Shri Ajit Singh (Noticee-4), under the provisions of Section 114AA of the Customs Act, 1962.

2.4. Aggrieved against the confirmation of differential customs duty alongwith interest and penalty, the Appellants have filed these appeals.

3. The Appellant No.1, M/s V. V. Impex submits that during the course of their normal verification of the stock, they found out that there was a shortage of material available in the stock register. As per their internal verification, they suspected involvement of Shri Ajit Singh, family friend of Shri Vikas Verma as the person involved in the alleged theft. It appears that Shri Ajit Singh, friend of Shri Vikas Verma, the owner of the firm came and asked Shri Mohan to handover the Silver jewellery. Thereafter, he took the Silver jewellery alongwith him and did not return the same. Accordingly, they filed a police complaint and registered an FIR. As the goods were procured without payment of customs duty, they intimated the Customs Officers to visit the unit and conduct the stock verification. On their request the Customs Officers visited their unit and conducted the

stock taking and recorded the shortage noticed in the Panchnama drawn.

3.1. Appellant 1 submits that they have lost their gold and Silver during the theft. However, they don't want any dispute to continue with the Department and accordingly they volunteered to pay the duty payable on the gold and Silver jewellery found short during the stock verification. It is their submission that even though they have lost their goods they have deposited the duty liability payable on the goods found short, as they were imported without payment of Customs duty. The Appellant 1 submits that there is no evidence of diversion of the goods by them. The entire issue has been raised on the basis of the information furnished by them to the Department. Subsequently, the Police during verification recovered approximately 20 Kgs of Silver from Shri Ajit Singh. However, they did not want to pursue the complaint. and compounded the offence, by taking reconciliation measures with Shri Ajit Singh. Thus, the Appellant 1 submitted that no *mens rea* can be attributed to them regarding the goods found short in the stock taking. As they have already discharged the Customs duty payable, there is no loss of Revenue to the Department.

3.2. In view of the above, the Appellant 1 submits that no penalty is imposable on them. Accordingly, they prayed for setting aside the penalty imposed on them

4. Shri Sumer Chand Verma Appellant No.2, Father of Shri Vikas Verma Proprietor of M/s V. V. Impex submits that he supervises the melting process of Gold and Silver during manufacturing of the jewellery in the unit. He also monitors the quality of the finished products. His son Shri Viaks Verma is the Proprietor of V.V.Impex and is also a Technician of Chain Making Machines. During the incident of theft, Shri Vikas Verma was in Dubai. Visa of Shri Vikas Verma expired, so he could not return immediately. Shri Ajit Singh was regulating the overall business of V.V. Impex. On 28.06.2021 Shri Mohan, Labour Supervisor in

M/s V.V. Impex informed him on phone that Shri Ajit Singh has come to the unit and took away all the raw materials and finished goods available in the unit. He has also taken some records alongwith him. Accordingly, he directed Shri Kapil Chadha to lodge an FIR against Shri Ajit Singh in the local Police Station. Subsequently, during the investigation, the Police recovered approximately 20Kgs Silver/Silver jewellery from Shri Ajit Singh and all the goods were in the custody of Police. He submits that Shri Ajit Singh was a close friend of his son and he trusted him and entrusted him the overall supervision of the business. However, Shri Ajit Singh breached the trust. Since he is a family friend, they did not want to pursue the complaint with the police and compromised by compounding the offence. Thus, he submits that the entire issue was noticed by them and they have informed the Customs Authorities; there is no evidence that they were involved in the diversion of the material with an intent to evade payment of Customs Duty. Accordingly, he submits that no penalty is imposable on him.

5. Shri Ajit Singh, Appellant N0.3 submits that he has been implied by the statements recorded from the various persons during the investigation. Accordingly, he sought cross-examination of Shri Ramakant, Shri Mohan, Shri Kapil Chadha, Shri Sumer Chand, Shri Vikas Verma and Shri Sanjeev Srivastava whose statements formed the very foundation of the allegations against him. The Learned Adjudicating Authority accepted the request and fixed the matter for cross-examination. Summons were issued to all the witnesses. However, despite service of summons, not a single witness appeared before the Adjudicating Authority for cross-examination. The entire case of the Department against the Appellant rests exclusively upon the statements recorded under Section 108 of the Customs Act, 1962, from Mr. Mohan, Mr. Ramakant, Mr. Kapil Chadha, Mr. Vikas Verma, Mr. Sumer Chand Verma and Mr. Sanjeev Srivastava. Except these statements, there is no independent documentary or circumstantial evidence to establish that the Appellant had clandestinely removed any duty-free goods from

the Noida Special Economic Zone or had knowingly dealt with goods liable for confiscation. It is further submitted that even according to the Department's own case, 19.496 kilograms of Silver jewellery was recovered by the local police from the possession of the Appellant. However, despite placing reliance upon such recovery, the Customs Department never took the recovered Silver into its custody, nor was any seizure effected under the Customs Act. No Panchnama or inventory was prepared by the Customs authorities, nor was any exercise undertaken to verify or match the recovered Silver with the stock allegedly found short at the premises of M/s V.V. Impex. Consequently, there is absolutely no evidence to establish that the Silver recovered by the police was the same Silver allegedly removed from the SEZ. In the absence of any physical verification, identification, purity test or comparison with the stock records, the Department's allegation remains a mere presumption. Further, there is no recovery whatsoever of the alleged shortage of 12,000 grams of gold from the Appellant No.3. In fact, Mr. Mohan, who is the only witness alleged to have witnessed the incident, categorically stated that he had neither handed over any gold to the Appellant nor seen the Appellant taking away any gold. Thus, Appellant No.3 submits that the statements relied upon by the Department became wholly inadmissible and devoid of evidentiary value, once the witnesses failed to appear for cross-examination

5.1. The Appellant No.3 submits that the Cross-examination is not an empty formality. It is the only recognized method by which the veracity, credibility and truthfulness of a witness can be tested. Unless a witness enters the witness box and subjects himself to cross-examination, the statement recorded behind the back of the noticee remains an untested assertion and cannot be treated as substantive evidence. It is submitted that Section 138B of the Customs Act, 1962 specifically governs the admissibility of statements recorded before Customs officers. The provision creates a limited exception to the general rule and permits reliance upon such statements only in the exceptional circumstances expressly provided therein, such as where the maker of the statement is dead, cannot be found, is incapable of giving evidence, is kept out of the way by the adverse party, or where securing his attendance would involve unreasonable delay or expense. In all other cases, the maker of the statement is required to be examined and the noticee must be afforded an effective opportunity to cross-examine him before such statement can be relied upon. In the present case, none of the conditions contemplated under Section 138B existed. On the contrary, the learned Adjudicating Authority itself accepted the Appellant's request for cross-examination and issued summons to all the witnesses, thereby acknowledging that their presence was necessary. However, despite issuance of summons, none of the witnesses appeared, nor did the Department record any satisfaction that their attendance could not be secured for any of the reasons contemplated under Section 138B. Consequently, the statements, having remained untested by cross-examination, ceased to have any evidentiary value and could not legally have been relied upon for imposing penalty upon the Appellant.

5.2. In view of the above, Shri Ajit Singh, Appellant No.3 submits that there is no evidence available to establish that he was involved in the alleged theft. The cross-examination as sought by him could not be conducted as none of the witnesses have turned up for cross-examination. Accordingly, he submits that uncorroborated statements recorded in the present case cannot be relied upon against him, as the provisions of Section 138B have not been followed. Thus, he submits that penalties imposed on him under Section 112 (a) & (b) are not sustainable. Accordingly, he prayed for setting aside the penalties upon him.

6. Further, Shri Vikas Verma submits that he is the proprietor of the firm V. V. Impex. In the impugned order, separate penalties have been imposed on the proprietor and the proprietory concern. Since Proprietory firm and Proprietor are one and the same, no separate penalty is imposable on Shri Vikas Verma, when penalty has already been imposed on the proprietorship

firm. In support of this submission, he has relied upon the following judgements:-

- Rama Shyama Papers Ltd. v. Commissioner of C. Ex., 2004 SCC OnLine CESTAT 3636
- Karan Traders v. Joint Commissioner of Central Excise, 2016 SCC OnLine Mad 11036
- CCE v. Parmarth Iron (P) Ltd., (2011) 7 GSTR 305
- Ruby Overseas v. Commr. of Customs, 2025 SCC OnLine CESTAT 3546

6.1. Accordingly, Shri Vikas Verma submits that no separate penalty is imposable on the proprietor.

7. Learned Authorized Representative for the Revenue submits that during the course of stock verification conducted by the Officers, it was noticed that there was a shortage of 12 Kg Gold and 46222.748 grams of Silver (.999). As the Appellant could not explain the reasons for the shortage, they are liable to pay Customs duty on the goods found short. Even though the Appellant Company has paid the Customs Duty on the goods found short, they cannot be absolved from the offence committed. Thus, the learned Authorized Representative justified the penalties imposed on the Appellants herein.

8. Heard both the sides and perused the appeal documents.

9. We find that the present issue involved is relating to shortage of 46222.748 gm of Silver and 12000 gm of gold, in the Appellant Company. It is on record that shortage was noticed by the Appellant themselves and they have informed the Customs Authorities to visit their unit and conduct the stock taking. The Officers of Customs visited the unit as per the information furnished by the Appellant Company. It is also on record that the Appellant Company filed theft case against Shri Ajit Singh friend of M/s V. V. Impex’s owner. The statement recorded from Shri Mohan, who was looking after the unit indicates that Shri Ajit Singh visited the unit, took over the

jewellery and records. As he has not returned the goods, the Appellant Company filed a theft case against him. We find that the FIR filed in the Police Station recorded it as a theft case. Later the Appellant Company entered into reconciliation and compounded the offence and closed the FIR. However, the Appellant Company has come forward and paid the differential customs duty on the gold and Silver jewellery found short.

9.1. From the above, it is evident that the entire issue is a case of theft on the Appellant's Unit. There is no evidence available on record to indicate that the Appellants have intentionally diverted the goods with an intent to evade payment of Customs Duty on the goods allegedly found short. It is on record that the Appellant Company has come forward and paid the differential duty alongwith interest. Thus, we find that there is no loss of revenue to the exchequer. Even though the Appellant has lost their goods the Appellant did not want to continue any dispute with the Department and paid the differential Customs Duty. Thus, we find merit in the submission of the Appellant that they were not involved in any diversion of goods found short. We find that the evidence on record also indicates that the shortage was due to theft in the Appellant's unit.

9.2. We find that the entire case of the alleged diversion of the goods is based on the statements recorded during the course of investigation. The statements indicates that Shri Ajit Singh, friend of Shri Vikas Verma came to the unit and took out the jewellery alongwith some records. We find that the entire case against Shri Ajit Singh is based on the statements of Mr. Ramakant, Mr. Mohan, Mr. Kapil Chadha, Mr. Sumer Chand Verma, Mr. Vikas Verma and Mr. Sanjeev Srivastava. During the course of adjudication, Shri Ajit Singh sought cross-examination of all the persons whose statements have been relied upon. Learned Adjudicating Authority also allowed the cross-examination, however, none of the persons appeared before the Adjudicating Authority for cross-examination. Thus, we find that the Adjudicating Authority could not verify the correctness of the statements given by the said persons during the course of adjudication. As per Section 138B of the Customs Act, it is mandatory that the Adjudicating Authority must conduct examination-in-chief of the persons who have given the statements which are relied upon. In the present case, we find that cross-examination has been offered by the Adjudicating Authority. However, the provisions of Section 138B of the Customs Act could not be complied with, as the witnesses have not turned up for cross-examination. Thus, we find that the statements given by the above persons are not corroborated by any evidence. Thus, we observe that the provisions of Section 138B have not been complied with and hence the statements recorded during the course of investigation cannot be relied upon to implicate the Appellant Shri Ajit Singh in the alleged offence.

9.3. Other than the statements, the only evidence against the Appellant is that approximately 20 kgs of Silver has been recovered by the Police during investigation. However, the Police failed to establish that recovered Silver was the same Silver allegedly found short from M/s V. V. Impex. No comparison was done to establish that the Silver Jewellery seized from the possession of Shri Ajit Singh was the same which was found short from M/s V. V. Impex. We observe that the Appellant Company has later entered into reconciliation with Shri Ajit Singh and compounded the offence by closing the FIR. As there is no conclusive evidence in the FIR that Shri Ajit Singh was the person involved in the alleged theft of Gold and Silver jewellery, we observe that the benefit of doubt should be given in favour of Shri Ajit Singh. We find that the complaint filed by the Appellant Company has been closed by the Police. In these circumstances, we find that there is no evidence available on record to show that **Shri Ajit Singh was the person behind the alleged theft in the Appellant-Company, M/s. V. V. Impex**. Thus, we hold that no penalty is imposable on Shri Ajit Singh, as his involvement in the alleged theft is not established conclusively. Accordingly, we set aside the penalty imposed on Shri. Ajit Singh in the impugned order.

10. Regarding the penalties imposed on Appellant 1 and Appellant 2, we find that the shortage of material available in the stock register was noticed by them and they informed the Customs authorities to visit the unit and conduct stock verification. The Officers of Customs visited the unit as per the information furnished by the Appellant Company. It is evident that the entire issue is a case of theft on the Appellant's Unit. There is no evidence available on record to indicate that the Appellants have intentionally diverted the goods with an intent to evade payment of Customs Duty on the goods allegedly found short. It is on record that the Appellant Company has come forward and paid the differential duty along with interest. Thus, we find that there is no loss of revenue to the exchequer. Even though the Appellant has lost their goods, the Appellant did not want to continue any dispute with the Department and paid the differential Customs Duty. Thus, we hold that no penalty is imposable on Appellant 1 and Appellant 2 and hence the same are set aside.

11. In the impugned order, penalty has also been imposed on the proprietor and the proprietorship firm. In this regard, we observe that the proprietorship firm and proprietor are one and the same and hence no separate penalty is imposable on proprietor and proprietorship firm. Since separate penalty has been imposed on the proprietorship firm, M/s. V. V. Impex, we hold that no penalty is imposable on the Proprietor, Shri Vikas Verma. We find that this view has been held in the following decisions:

- Rama Shyama Papers Ltd. v. Commissioner of C. Ex., 2004 SCC OnLine CESTAT 3636
- Karan Traders v. Joint Commissioner of Central Excise, 2016 SCC OnLine Mad 11036
- CCE v. Parmarth Iron (P) Ltd., (2011) 7 GSTR 305
- Ruby Overseas v. Commr. of Customs, 2025 SCC OnLine CESTAT 3546

11.2. Thus, by relying on the ratio of the decisions cited supra, we hold that no separate penalty is imposable on the proprietor Shri Vikas Verma, as penalty has already been imposed on the proprietorship firm. Accordingly, we set aside the penalty imposed on Shri Vikas Verma.

12. We find that Customs Duty involved in the shortage of the goods have already been paid and the same has been appropriated in the impugned order. Accordingly, we uphold the differential customs duty alongwith interest confirmed in the impugned order. However, penalty imposed on all the Appellants herein are not sustainable, as there is no evidence available on record to implicate the Appellants in the alleged diversion of the said goods.

13. In view of the above, we pass the following order:

(i) We uphold the differential customs duty along with interest confirmed in the impugned order.

(ii) We set aside the penalties imposed on all the Appellants herein, in the impugned order.

(iii) Penalty imposed on Shri Vikas Verma is set aside.

(iv) The appeals are disposed of in the above terms.

(Pronounced in open court on 11.08.2026)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Nihal