# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT NO.I

**Customs Appeal No.70097 of 2026**

(Arising out of Order-In-Appeal No.NOI-CUSTM-000-APPL-141-142-24-25, dated 19.07.2024 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

**M/s Shree Venkateshwara Exports** .....**Appellant**
Proprietor Shri Raman Goyal, Gali Bhattewali,
Patti Mehar Baraut, Baghpat, Uttar Pradesh 250611

*VERSUS*

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

**APPEARANCE:**

Shri Abhinav Kalra, Advocate &
Shri Nishant Mishra, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

**FINAL ORDER NO.70285/2026**

DATE OF HEARING : 07.07.2026
DATE OF DECISION : 13.08.2026

**K. ANPAZHAKAN:**

The present appeal has been filed challenging the Order-In-Appeal No. NOI-CUSTM-000-APPL-141-142-24-25, dated 19.07.2024 passed by Commissioner (Appeals) CGST & Central Excise, Noida.

2. Briefly stated facts of the case are that M/s Shree Venkateshwara Exports, Baghpat, U.P.(herein after referred as the appellant) is a proprietorship firm, holding Import Export

Code [IEC No. 0514058242] and engaged in exports of readymade garments.

3. On 08.03.2017 & 09.03.2018, the appellant filed 35 shipping bills for export of readymade garments at ICD Pant Nagar of FOB valued Rs 19,93,30,002/-under the claim of drawback. On the basis of intelligence that the appellant was availing inadmissible drawback byway of over-invoicing the export goods, a team of DRI officers from Noida Regional Unit visited ICD Pant Nagar, after which the goods were examined physically and it was alleged that the goods were of inferior quality and their values declared were very high. On market enquiry conducted, by way of costing given by a couple of manufacturers, the export goods were considered as over-invoiced and consequently, seized on the ground that they were liable for confiscation u/s 113 of the Customs Act, 1962.

4. On the request made by the appellant for release of goods on provisional basis and the drawback shipping bills may be converted into normal shipping bills, the goods were provisionally released and export of goods was allowed thereafter. After export of goods was complete, the appellant received the entire remittances equivalent to the FOB value.

5. On the basis of aforesaid investigation, show cause notice was issued for confiscation of goods on the allegation of over-valuation with intent to avail inadmissible drawback, rejection of declared value and imposition of penalties u/s 114 and 114AA on the appellant.

6. The show cause notice was thereafter adjudicated vide Order-in-Original No. 16/Pr. Commr./NOIDA-CUS/2020-21 dated 10.11.2020 passed by the Principal Commissioner of Customs, Noida, by which the goods meant for export were confiscated and released on imposition of redemption fine. Penalty was imposed on the appellant u/s 114 and 114AA as well as on the CHA.

7. Aggrieved by the Order-in-Original dated 10.11.2020 relating to 35 shipping bills, the appellant preferred the appeal before this Tribunal, which was registered as Customs Appeal No. 70395 of 2023.

8. During the pendency of aforesaid appeal before this Tribunal, show cause notice dated 13.01.2022 was issued in respect of 63 shipping bills filed by the appellant in Jan 2017 &Feb'2017 under the claim of drawback. On the basis of the same enquiry and investigation basis which earlier show cause notice was issued, the show cause notice dated 13.01.2022 proposed the following:

(i) Goods covered under 63 Shipping Bills having FOB value Rs. 333,72,96,098/-should not be confiscated under Section 113(i) & (ia) of the Act. As the goods are not physically available for confiscation, why redemption fine should not be imposed;
(ii) Declared FOB value of Rs 33,72,76,098/- declared in 63 shipping bills should not be rejected;
(iii) Inadmissible duty drawback to Rs 3,20,02,367/- and ROSL of Rs 65,45,058/- claimed by mis-declaring the value of export goods should not be denied;
(iv) Penalties should not be imposed under Section 114 & 114AA of the Act.

9. The show cause notice dated 13.01.2022 was adjudicated vide Order-in-Original No. 20/2022-23 dated 02.12.2022 confirming the proposals made in the show cause notice on the basis of enquiry and investigation conducted in respect of the 35 shipping bills relating to the month of March 2017 on the ground that the goods pertaining to subject 63 shipping bills for the month of Jan 2017 and Feb 2017 are similar, the suppliers and buyer are the same and eleven common goods were exported and therefore, the modus-operandi adopted for export of 35 shipping bills for the later period is same for the goods exported goods under the subject 63 shipping bills.

10. Order-in-Original dated 02.12.2022 was then challenged by the appellant before the Commissioner (Appeals) and by the impugned Order-in-Appeal dated 19.07.2024, the Commissioner (Appeals) held that the appeal filed by the appellant is time barred, despite the fact that the appeal was filed within the condonable period, with delay of only 17 days and the reasons provided for delay i.e. 'shifting of counsel's office', constitutes sufficient reasonable cause and therefore delay in filing appeal was liable to be condoned.

11. Further, despite the fact that the appellant had only claimed drawback which was rejected and no amount of drawback was received by the appellant, the Commissioner (Appeals) held that the conditions of mandatory pre-deposit has not been fulfilled as 7.5% of amount of drawback has not been deposited and therefore mandatory condition of pre-deposit has not been fulfilled.

12. Furthermore, despite the aforesaid findings on the issue of limitation and pre-deposit, the Commissioner (Appeals) proceeded to decide the appeal on the merits by reiterating the findings recorded in the adjudication order.

13. Aggrieved by the impugned Order-in-Appeal dated 19.07.2024, the appellant has preferred the present appeal.

14. The submissions made by the Appellants are summarized as under:-

I. During the pendency of the present appeal, Customs Appeal No.70395 of 2023 inter-parties relating to 35 shipping bills filed in the month of March 2017 has been decided by this Tribunal vide Final Order No. 70174-70175/2025 holding that the appellant has received remittances equal to the FOB value of export goods and therefore FOB value cannot be rejected, market enquiry carried out by the officers of ICD, Pant Nagar was deliberately ignored, market enquiry conducted by DRI officers was byway of costing given by couple of manufacturers without any certificate issued by the Cost Accountant or Chartered Accountant and therefore there cannot be any over-valuation. Imposition of penalties on the appellant and CHA has also been set-aside by this Tribunal.

II. Since the show cause notice and adjudication order in the present case was passed on the basis of investigation conducted by DRI in respect of 35 shipping bills filed in March 2017 and no independent enquiry has been conducted in respect of 63 shipping bills filed in the month of Jan 2017, Feb 2017, hence the entire case set up by the revenue in the present appeal rests solely on the basis of investigation conducted in respect of 35 shipping bills.

III. Now once the appeal in respect of 35 shipping bills has been allowed by this Tribunal, then the entire case set up by the revenue in the present appeal does not survive and therefore the present appeal is liable to be allowed on merits and the imposition of penalty as well as rejection of FOB value is liable to be rejected.

IV. As regards the findings recorded in the impugned order that the appeal is time barred, the appellant submits that there was delay of only 17 days, which was properly explained by the appellant on account of shifting of counsel's office, which constitutes sufficient reasonable cause to condone the delay and therefore the findings recorded in the impugned order to the contrary, is completely arbitrary and perverse.

V. As regards findings recorded in the impugned order on pre-deposit, the appellant submits that there was no requirement of pre-deposit of 7.5% of drawback amount, as the amount of drawback was never received by the appellant and therefore there was no requirement of its pre-deposit. The circular relied upon by the Commissioner (Appeals) is relevant only in cases where the drawback is claimed and disbursed to the exporter and not in the case such as the present case where drawback was never disbursed to the exporter and therefore, the appellant is not required to deposit 7.5% of the drawback amount.

15. Learned Authorized Representative appearing on behalf of the Respondent-Revenue reiterates the findings recorded in the impugned order.

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

17. Before going into the merits of the case, we would like to examine the preliminary objections raised in the Impugned Order. In the impugned order, it has been observed that the appeal is time barred, as there was a delay of 17 days. We find that the Ld. Commissioner (Appeals) has finally decided the issue on merits. Thus, it appears that the Commissioner (Appeals) has condoned the delay and decided the issue on merits.

17.1. As regards findings recorded in the impugned order on pre-deposit, we agree with the submission of the Appellant that there was no requirement of pre-deposit of 7.5% of drawback amount, as the amount of drawback was never received by the appellant and therefore, we hold that there was no requirement of its pre-deposit. As the Ld. Commissioner (Appeals) has finally decided the issue on merits, it appears that the Commissioner (Appeals) has accepted this view and proceeded to decide the issue on merits. Thus, we proceed to decide the issue on merits without going into the preliminary issues raised.

18. We find that the issue in the present appeal is no longer *res integra.* We find that during the pendency of the present appeal, Customs Appeal No.70395 of 2023 relating to 35 shipping bills filed in the month of March 2017 has been decided by this Tribunal vide Final Order No.70174-70175 of 2025 holding that the Appellant has received remittances equal to the FOB value of export goods and therefore, FOB value cannot be rejected. The

relevant paras of the judgment is reproduced below for ready reference:-

> "6. We find that contentious issue in the case is only allegation of over invoicing of goods exported under cover of 35 shipping bills from ICD Pantnagar. The evidences collected by the Department are only value of goods determined on the basis of costing and non existence of few suppliers. It is interesting to note that market enquiry carried out by the Officers of ICD Pantnagar shows entirely different result from the report of DRI Officers in respect of value of export goods. As per report of ICD Customs Pantnagar, the value of goods exported was at par or at higher side than FOB value of the respective goods. The outcome of the enquiry was very much in the knowledge of the DRI but it was deliberately ignored. DRI Officers got the enquiry conducted, not from the market but by way of costing given by a couple of manufacturers of garments and applied Rule 5 of the CVR to determine value of export goods. It is well established fact that market price of a product does not depend on the value arrived by way of costing. Many times market price is substantially higher than the costing value. It is observed that the Department has issued instruction on the method of costing vide Standing Order No.41/2007 dated 10.10.2007 issued by Jawahar Lal Nehru Customs House, Nhava Sheva where in para9, it is mentioned as below:-
>
> > "9. Where the value has to be determined by Computed value method under Rule 5, the proper officer shall give due consideration to the cost-certificate issued by a Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter."
>
> No such certificate was demanded by the Department in the instant case but the costing done by some manufacturers was accepted without considering the actual cost of raw materials etc.

7. In view of the above, we are of the view that costing certificate on which the department relies does not have any evidentiary value for determining the cost of the exported goods. It is found that the Appellant has produced all bills/invoices of purchases of goods with payment details thereof. The Department did not challenge its authenticity. In the case of M/s Peerless Consultancy Services Private Limited vs. Commissioner of Customs (PORT), Kolkata; 2013-(291) E.L.T. 201 (Tri.- Kolkata), it has been held by the Tribunal that the burden of proof is on the Department regarding overvaluation in absence of flow back of payment made to the merchant-exporters. Moreover, we find that the Appellant had undoubtedly received remittances equal to the FOB value of the exported goods. The department has not proved any flowback of the money from foreign buyers to exporter or vice versa. There is no proof at all that any transaction of money was carried out other than the payment of FOB value of goods. We find support from the decision of Siddachalm Export Pvt. Ltd. [2011 (266) E.L.T. 3 (SC)] regarding acceptance of FOB value when bank realization produced. In the case of Vishal Exports Overseas Ltd. [2007 (209) E.L.T. 331 (S.C.), the FOB value cannot be rejected when foreign remittances equal to FOB value is received.

We are, therefore, of the considered view that there is no case of over invoicing of export goods in the present case.

8. Other issue in the present case is declaration of higher quantity of goods and drawback in shipping bill No.4616900 dated 08.03.2017. In place of 12300 Pcs, in shipping bill it was mentioned 123000 Pcs. We find that all export documents like invoice, packing list etc were showing correct quantity of export goods. We thus find sufficient force in the contention of the Appellant that in shipping bill, quantity of goods was shown on higher side due to typographical mistake. It is a well settled principle that no penalty can be imposed for typing error. As regards penalty imposed on the CHA M/s Surya Jyoti Global Logistics (Appellant No.2) under

Section 114 and 114AA of the Act, it is submitted that the Appellant has only acted as a Customs Broker in filing of shipping bills on behalf of the exporter on the basis of information provided by the exporter and presented the impugned goods for examination. Apart from handling the customs clearance of these impugned consignments as Customs Broker, the Appellant had no other role in the impugned exports. It is submission of the Appellant that allegation of facilitating the export of overvalued goods is based on presumptions only and not backed by any evidence. It is further submitted that impugned goods have been confiscated under Section 113(i) and 113(ia) of the Act being overvalued. It is the case of the Appellant that in this case, the Appellant did not have any role in either finalization of value of the impugned goods for the purpose of their export or preparation of export invoices. The exporter and overseas buyer had themselves finalized FOB values of the subject goods and the Appellant has no role in it. The Appellant received export invoices for filing of shipping bills wherein the FOB values were already declared. It is also submitted that the Appellant has acted only as a Customs Broker and was not required to verify the value of the subject goods.

9. In view of the facts as stated above, we find that there is no role of the CHA (Appellant No.2) in deciding valuation of the subject goods and the Appellant is also not responsible for verification of declared FOB values of the subject goods. It is our considered view that the Customs Broker i.e. Appellant No.2 has not done any act of commission or omission which would render the goods liable for confiscation under Section 113(i) or under Section 113(ia) of the Act.

10. In view of the above discussions, the Redemption fine and the penalties imposed under Section 114 and 114AA on both the Appellants are set aside. Both the appeals filed by the Appellants are allowed with consequential relief, as per law."

19. We find that the show cause notice and adjudication order in the present case was passed on the basis of investigation conducted by DRI in respect of the 35 shipping bills filed in March 2017 and no independent enquiry has been conducted in respect of these 63 shipping bills filed in the month of Jan 2017, Feb 2017. Thus, we observe that the entire case set up by the revenue in the present appeal rests solely on the basis of investigation conducted in respect of 35 shipping bills. Now once the appeal in respect of 35 shipping bills has been allowed by this Tribunal, then the entire case set up by the revenue in the present appeal does not survive and therefore the present appeal is liable to be allowed on merits and the imposition of penalty as well as rejection of FOB value is liable to be rejected.

19.1. Thus, by respectfully following the ratio of the decision cited above, we hold that the demand confirmed in the impugned order is legally not sustainable and hence we set aside the same.

20. In view of the above findings, the impugned order is set aside and appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 13.08.2026)

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

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

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