CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 1

Customs Appeal No. 50141 Of 2024

[Arising out of Order-in-Original No. 21/VC/Commr/Munjal Showa/ICD-PPG/2023-24 dated 17.10.2023 passed by the Commissioner of Customs, Patparganj, Delhi]

Munjal Showa Limited : **Appellant**
Industrial Area, Sector-18, Gurgaon
Haryana, India-122015

Vs

Commissioner of Customs, Patparganj : **Respondent**
ICD Patparganj, Gazipur, Near Gazipur
Bus Depot, Delhi-110096

APPEARANCE:
Shri B. L. Narasimhan, Shri Anurag Kapur and Shri Kaushal Jaisalmeria Advocates for the appellant.

Shri Girijesh Kumar, Authorised Representative of the Department

CORAM :
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No.51317/2026

Date of Hearing:13.07.2026

Date of Decision:06.08.2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Munjal Showa Limited[1] against Order-in-Original No. 21/VC/Commr/Munjal Showa/23-24 dated 17.10.2023 passed by the Commissioner of Customs, ICD, Patparganj, Delhi, whereby, pursuant to the remand directions of the CESTAT also of Hon'ble Supreme Court vide order dated 23.09.2022 penalty proceedings have been adjudicated afresh.

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1 The appellant

2. The brief facts of the case are that the appellant was engaged in the manufacture of automobile components and, during the relevant period, appellant imported consignments of components of shock absorbers through ICD, Ballabhgarh. For clearance of the imported goods. The appellant filed Bill of Entry No. 1289 dated 22.05.2003 and Ex-Bond Bills of Entry Nos. 274 dated 23.06.2003 and 282 dated 26.06.2003. The customs duty payable on the imported goods was sought to be discharged by utilizing nine Transfer Release Advices[2] purportedly issued against DEPB licences in terms of Notification No. 45/2002-Cus. dated 22.04.2002. Subsequently, the Customs authorities at ICD, Ballabhgarh sought verification of the said TRAs from the issuing authority, namely Jawaharlal Nehru Custom House[3] Nhava Sheva. Upon verification, the Special Intelligence and Investigation Branch[4] JNCH informed that the DEPB licences and the corresponding TRAs were not genuine and had not been issued by the competent authority. On being informed of the alleged forgery, the appellant, deposited the customs duty amounting to Rs. 1,29,43,927/- vide TR-6 Challan dated 12.08.2003 under protest. Thereafter, SIIB, JNCH conducted detailed investigations and, vide letter dated 14.10.2003, informed that nineteen DEPB licences, including the nine licences utilized by the appellant, were found to be forged.

2.1 On the basis of the said investigations, a Show Cause Notice No. VIII (ICD FBD)6/03/241/415 dated 03.10.2006 was issued proposing confiscation of the imported goods under Section 111(m) of the Customs Act, 1962; confirmation and appropriation of customs duty

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2 TRAs
3 JNCH
4 SIIB

amounting to Rs. 1,29,43,927/- under Section 28; recovery of interest under Section 28AB; imposition of penalty upon the appellant under Section 114A; and penalties upon Shri K. Chakravorty, Senior Divisional Manager, and Shri Kanwaljeet Singh, Junior Officer (Commercial), under Section 112 of the Customs Act, 1962. The said Show Cause Notice was adjudicated vide Order-in-Original No. 14/KKJ/Adjn./2007 dated 17.10.2007, whereby the adjudicating authority confirmed the demand of customs duty amounting to Rs. 1,29,43,927/-, appropriated the amount already deposited by the appellant, confirmed the interest liability under Section 28AB, and held the imported goods liable to confiscation under Section 111(m), imposed redemption fine of Rs. 10,00,000/-, imposed penalty equal to the duty amount upon the appellant under Section 114A, and also imposed penalties upon Shri K. Chakravorty and Shri Kanwaljeet Singh under Section 112 of the Customs Act, 1962.

2.2 Aggrieved by the said order, the appellant preferred an appeal before CESTAT. Vide Final Order Nos. C/67-69/2008 dated 18.03.2008, the Tribunal upheld the confirmation of duty and interest, set aside the redemption fine, and remanded the matter to the adjudicating authority for fresh consideration only on the issue of imposition of penalties after permitting cross-examination of Shri Vijay Singh Bishnoi and granting reasonable opportunity of personal hearing to the appellant. The appellant challenged the Tribunal's order before the Hon'ble Punjab & Haryana High Court by filing Customs Appeal No. 27 of 2008. The said appeal was dismissed by the Hon'ble High Court vide order dated 01.09.2008.

The appellant, thereafter, approached the Hon'ble Supreme Court by way of Civil Appeal No. 2576 of 2010. The Hon'ble Supreme Court, vide order dated 23.09.2022, dismissed the appeal insofar as the duty liability was concerned, while observing that the penalty proceedings pursuant to the Tribunal's remand were still pending and directed the adjudicating authority to complete the remand proceedings expeditiously, preferably within six months. Pursuant to the aforesaid directions, the adjudicating authority fixed dates for personal hearing. At the request of the appellant, cross-examination of Shri Vijay Singh Bishnoi was conducted on 01.03.2023) During cross-examination, Shri Bishnoi stated, inter alia, that he had independently dealt in sale and purchase of import licences; admitted having business dealings with the appellant in relation to five import licences, but denied acting as an agent of M/s ACME Trading Co. or M/s Ankur Impex in relation to the impugned TRAs. After considering the remand proceedings, cross-examination, written submissions and personal hearing, the Commissioner of Customs passed the impugned Order-in-Original No. 21/VC/Commr/Munjal Showa/23-24 dated 17.10.2023, wherein he held that the appellant had failed to establish its bona fides or due diligence in utilizing the forged DEPB licences/TRAs and concluded that penalty under Section 114A of the Customs Act, 1962 was attracted. Accordingly, the Commissioner imposed a penalty of Rs. 1,29,43,927/- upon M/s Munjal Showa Ltd. under Section 114A, while extending the statutory option to pay 25% of the penalty in terms of the first proviso to Section 114A. However, the Commissioner did not impose any personal penalty on Shri K. Chakravorty under Section 112(b)(ii), holding that he was merely an employee acting under the instructions of the company and had derived no personal benefit, and dropped the proceedings against Shri Kanwaljeet Singh in view of his demise. Aggrieved by the impugned Order-in-Original dated 17.10.2023, the Appellant has filed the present appeal before this Tribunal.

3. Learned counsel for the appellant submitted that the Appellant was a bona fide purchaser of the subject scrips and TRAs and had no knowledge of the fraud. He submitted that appellant had purchased the subject DEPB scrips and TRAs from Mr. Vijay Singh Bishnoi, who represented himself as a DEPB agent of M/s ACME Trading Co., and Mis Ankur Impex, for valuable consideration paid through proper banking channels. The Appellant had previously purchased genuine DEPB scrips from Mr. Bishnoi without any dispute, a fact admitted by him during cross examination, and therefore, the appellant had no reason to doubt the authenticity of the subject scrips. The debit notes issued by M/s ACME Trading Co. and M/s Ankur Impex establish that the subject scrips were sold to the Appellant by these entities. Further, Mr. Vikram Joshi vide letters dated 08.08.2003 and 14.08.2003 had expressly admitted the sale of the subject scrips and refunded Rs. 24,25,000/-towards the consideration received. Learned counsel submitted that the impugned order had failed to consider that the appellant was a victim of the fraud. During the relevant period, there was no mechanism available to the Appellant to independently verify the

genuineness of DEPB scrips and TRAs from the DGFT. Further, none of the statements or documents relied upon by the Department indicate any role, knowledge, connivance, or involvement of the appellant in the alleged forgery. Consequently, no mala-fide can be attributed to the appellant.

3.1 Learned counsel further submitted that it is a settled principle of law that the burden of proving mala fide conduct, rests upon the Department and it is not for the assessee to establish its bona fides. The allegations of mala fide are serious allegations requiring proof of a high degree of credibility and cannot be sustained on mere assumptions or suspicions. Penalty under Section 114A of the Customs Act can be sustained only when the Revenue discharges this burden through cogent, affirmative, and credible evidence demonstrating the conscious involvement of the appellant in the alleged wrongdoing. In support of his contention, learned Counsel relied upon the decision of **M/s Uniworth Textiles Ltd. vs. Commissioner of Central Excise[5].** Further, learned counsel submitted that the CESTAT, while remanding the matter on the issue of penalty expressly recognised that confirmation of duty does not automatically justify imposition of penalty. In Para 6.1 of the said Order, the Tribunal observed that "penal action, in our opinion, is warranted only when there is knowledge or intention on the part of the appellants about the fraud committed." Thus, the Tribunal itself had held that the mere fact that the subject scrips were ultimately found to be forged was not sufficient to sustain

5 2013 (288) E.LT. 161 (S.C.)

penalty, unless the Department establishes that the Appellant had knowledge of the fraud or was a conscious participant therein. The said principle was subsequently echoed by the Hon'ble Supreme Court in the appellant's own case wherein it was held that whether the buyer had knowledge of the fraud or forged DEPB licences and whether the buyer had taken requisite precautions to ascertain their genuineness would have a bearing on the issue of penalty and not on the duty liability.

3.2 Learned counsel further submitted that it is well settled that imposition of penalty is in nature of punishment for an act of deliberate deception by the appellant with an intent to evade duty. In order to impose penalty under Section 114A, *mens rea* was a necessary constituent, and the same cannot be inferred merely from omission, negligence, lack of due diligence, or failure to establish bona fides. Before any penal consequences can follow, the Department must establish a positive and deliberate act on the part of the assessee demonstrating a conscious intention to evade duty. Mere failure to undertake further verification or omission to take additional precautions does not, by itself, amount to wilful suppression or mala fide conduct. In support of his submissions, learned counsel relied upon the decision of the Hon'ble Supreme Court in **Commissioner of C. Ex., Chandigarh vs. Pepsi Foods Ltd.**[6] In the present case, the Department has failed to identify any positive act evidencing the appellant's knowledge of, or participation in, the alleged fraud. Learned counsel submitted that

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6 2010 (260) E.L.T. 481 (S.C.)

material had been produced to evidence that the appellant had fabricated documents, made any wilful misstatement, concealed facts, or colluded with any person involved in the forgery. Accordingly, in the absence of any positive evidence of conscious wrongdoing, penalty under Section 114A was unsustainable.

3.3 Learned counsel further submitted that the appellant had checked the credibility of Mr. Vijay Singh Bishnoi with Other DEPB dealers and Customs Housing Agents in the market and the reports were positive. The same was stated by Mr. K. Chakravorty, then Sr. Div. Manager in his statement dated 17.11.2004. The appellant had verified that the subject scrips and TRAs were supported by transfer letters from the original scrip holders and forwarding letters issued by the Ministry of Commerce evidencing issuance of the scrips. He submitted that the appellant had further verified that the scrips bore the signatures and seals of the licensing authority and that the particulars mentioned therein appeared correct. On such verification, the documents were found to be genuine on their face, reinforcing the Appellant's bona fide belief regarding their authenticity. In view of the above, learned counsel submitted that the appellant had taken all possible steps to verify the authenticity of the subject scrips and TRAS. Without prejudice, he further that the appellant was eligible for the benefit of reduced penalty in terms of proviso to Section 114A of the Customs Act. Without prejudice, the learned counsel submitted that they had paid 25% of the penalty imposed vide the impugned Order within 30 days from the date of communication of the impugned Order. Accordingly, the appellant has duły complied with the conditions prescribed under the first and second provisos to Section 114A and was entitled to the benefit of reduced penalty to the extent of 25% of the penalty imposed.

4. Learned Authorized Representative appearing for the Department reiterated the findings in the impugned order and submitted that based on the impugned Order-in-Original dated 17.10.2023, the only surviving issue after the remand by the CESTAT and the directions of the Hon'ble Supreme Court is the imposition of penalty under Section 114A of the Customs Act, 1962 and the personal penalties upon the officers of the appellant, since the duty demand already stands concluded. The legal controversy involved in the present appeal is no longer res integra and stands squarely covered by a catena of decisions rendered by the Hon'ble CESTAT, New Delhi. In particular, learned AR submitted that the decisions of **M/s. Mercedes Benz India Pvt. Ltd. & Ors. vs. Commissioner of Customs**[7], **M/s. Nidhi Enterprises vs. Commissioner of Customs (Export), New Delhi**[8] and **M/s Freudenberg Nonwovens India Pvt. Ltd. vs. Commissioner of Customs**[9] haD comprehensively examined the issue of imports made against forged DEPB scrips/TRAs, the scope of due diligence expected from an importer, and the circumstances under which penalty under Section 114A is attracted. These decisions, while following the law declared by the Hon'ble Supreme Court in **Munjal Showa Ltd. vs. Commissioner of Customs & Central Excise**

7 (2020 (2) TMI 437 - CESTAT New Delhi)
8 2022 (11) TMI 869-CESTAT New Delhi
9 (2025 (11) TMI 873 - CESTAT New Delhi]

(Delhi-IV)[10] consistently hold that the question of penalty is required to be determined on the facts relating to the importer's knowledge, conduct and due diligence. Since the facts and the legal issue involved in the present proceedings are identical to those considered in the aforesaid judgments of the CESTAT, New Delhi, the present appeal deserves to be decided in accordance with the ratio laid down therein. The impugned Order-in-Original No. 21/VC/Commr/Munjal Showa/ICD-PPG/2023-24 is legally flawless and properly executed the mandate laid down by the Hon'ble Supreme Court and the Tribunal to determine penal liabilities arising out of a confirmed tax evasion.

4.1 Learned Authorized Representative further submitted that the defense of "bona fide purchase" raised by the appellant was completely untenable in law since it is a well-settled legal maxim that fraud vitiates everything. Fake and forged scrips/TRAs are nullities from inception, and an importer utilizing them cannot claim immunity from penal provisions on a plea of ignorance. Learned AR contended that the appellant had sought to shift the blame upon Sh. Vijay Singh Bishnoi, alleging that he had supplied the forged licences. However, the investigation revealed that the appellant had failed to produce any documentary evidence whatsoever in support of this allegation. Even during the cross-examination, no material emerged establishing that Shri Bishnoi had sold the disputed nine forged licences to the appellant. On the contrary, Shri Bishnoi categorically denied any involvement with the impugned forged

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10 (2022 (382) E.L.T. 145 (S.C.)]

DEPB/TRAs. Hence, the appellant's defence was based on mere allegations without proof and had rightly been rejected. Learned AR stated that the appellant had failed to exercise the minimum level of due diligence expected from a prudent importer. The appellant admittedly did not verify the authenticity of the DEPB licences from DGFT, did not verify the identity of Shri Bishnoi, did not verify the credentials or addresses of M/s ACME Trading Co. and M/s Ankur Impex, and did not verify the genuineness of the licences from the original DEPB holders. Such complete failure to undertake elementary verification clearly established negligence and disentitled the appellant from claiming any equitable relief or bona fide protection. The statutory mandate of Section 114A of the Customs Act, 1962 is absolute and leaves no judicial discretion to reduce or waive the penalty once the short-levy or non-levy of duty has been established by reason of collusion, willful misstatement, or suppression of facts.

5. We have heard the learned counsel for the appellant, learned AR for the Department and perused the records. The only issue before us is whether the adjudicating authority was right in imposing mandatory penalty under Section 114A of the Customs Act, 1962.

6. The Hon'ble Supreme Court of India, while deciding the appeal of the appellant has categorically held that "fraud vitiates everything" and forged/fake DEPB licenses/scrips are void ab initio, and confirming that the Department was absolutely justified in invoking the extended period of limitation. In their aforesaid

judgement on the appeal filed by the appellant, **Munjal Showa Ltd. versus Commissioner of Customs & Central Excise (Delhi-IV)[11],** the Apex Court observed as follows:-

> *"9. In that view of the matter and on the principle that fraud vitiates everything and such forged/fake DEPB licenses/Scrips are void ab initio, it cannot be said that the Department acted illegally in invoking the extended period of limitation. In the facts and circumstances, the Department was absolutely justified in invoking the extended period of limitation."*

7. It is a settled position of law that the legal ingredients required to invoke the extended period of limitation under the proviso to Section 28 of the Customs Act, 1962-namely collusion, willful misstatement, or suppression of facts-are completely identical and coterminous with the statutory triggers required for the imposition of a penalty under Section 114A of the Act. Once the Apex Court had upheld the finding of fraud and the invokation of the extended period, the imposition of Section 114A becomes an automatic, non-discretionary, and a mandatory consequence. We find that Section 114A does not provide any latitude to the adjudicating authority to dilute, reduce, or waive this penalty equal duty.

8. The presentation of forged TRAs to clear shock absorber components under a "Nil" rate of duty constitutes an explicit,

11 (2022 (382) E.L.T. 145 (S.C.)

positive act of misstatement and deception against the state exchequer. We find that the cross-examination of the broker and the responses of the original license holders, demonstrate that the appellant had failed to carry out due diligence in verifying the validity of the documents with the issuing DGFT authorities.

9. We find that in similar factual matrix, the issue involved in the present appeal is no longer res integra and stands settled by a catena of judicial pronouncements are available to uphold the imposition of penalty under Section 114A of the Customs Act, 1962. **In Freudenberg Nonwovens India Pvt. Ltd. v. Commissioner of Customs (supra),** the Tribunal reiterated that in cases involving forged TRAS/DEPB scrips, the liability to penalty under Section 114A depends upon the extent of due diligence exercised by the importer and, following the earlier decision in Mercedes Benz India Pvt. Ltd., affirmed the principles governing such cases. **In Nidhi Enterprises vs. Commissioner of Customs (Export), New Delhi (supra),** the Tribunal held that an importer claiming to be a bona fide purchaser must establish that reasonable precautions and due diligence were exercised before availing the benefit of transferable duty credit scrips, and also reiterated that the question of penalty is to be examined on the basis of the facts attributable to the importer. In **Mercedes Benz India Pvt. Ltd., O.A. Associates & Pashupati Acrylon Ltd. versus Commissioner of Customs & Others (supra),** the Tribunal elaborately examined the legal position governing imports

against transferable duty credit scrips and held that an importer is required to establish due diligence regarding the genuineness of the documents, particularly the Transfer Release Advice (TRA), while determining liability to penalty. **In Friends Trading Co. versus Union of India**[12], which stands affirmed by the Hon'ble Supreme Court in Munjal Showa Ltd. (supra), it was held that forged DEPB scrips are void ab initio, that duty demand is legally sustainable and that the extended period of limitation is invocable in cases involving fraud.

10. In the instant case, the appellant has not led any evidence to establish that they had carried out due diligence before purchasing the fake scrips/TRAs. Further, the cross-examination has established that Shri Vijay Singh Bishnoi had denied the appellant's contention that he had sold these scrips to the appellant. Hence, the submissions made by the learned counsel cannot be accepted. In view of the above settled position, we uphold the imposition of penalty under Section 114A. However, it has been submitted by the learned counsel that the appellant paid 25% of the penalty under Section 114A within 30 days of the impugned order. We note that Section 114A reads as follows:-

> **"114A. [Penalty for short-levy or non-levy of duty in certain cases.**
> ***[Inserted by Act 33 of 1996, Section 64 (w.e.f. 28.9.1996).]***
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> - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously

12 **[2011 (267) E.L.T. 33 (P&H)]**

refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:]

[Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28-AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:
Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, for the purposes of this section, the duty or interest as reduced of increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, alongwith the interest payable thereon under section 28-AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:
Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.Explanation.-For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii)any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]"

11. We note that 1st and 2nd proviso to the section clearly provides that the benefit of reduced penalty is permitted, provided that 25% of penalty is paid within 30 days of communication of order. We take note of the learned counsel's submission that this condition was duly complied. The department has not submitted any contrary evidence. In view of the above, we hold that the appellant is eligible for the benefit of reduced penalty of 25% as mandated under Section 114A of the Customs Act, 1962.

12. In view of the above, we uphold the impugned order and allow the appeal partly to the extent indicated above.

(Order pronounced in the open Court on 06.08.2026)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.