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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75730 of 2024

(Arising out of Order-in-AppealNo.KOL/CUS/ACC/KS/59/2024 dated25.01.2024 passed by Commissioner of Customs (Appeals), Kolkata.)

Shri Anupam Mondal
(M/s. East India Impex, Belaka Housing Complex, Barmangachi, 24 Pgs (N)-743706, West Bengal.)

...Appellant

VERSUS

Commissioner of Customs (Airport & ACC), Kolkata
.....Respondent
(2nd Floor, Custom House, 15/1, Strand Road, Kolkata-700001.)

APPEARANCE

Ms. Atika Sumran Ahmed, Advocate for the Appellant (s)
Shri Faiz Ahmed, Authorized Representative for the Revenue

CORAM:HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 75864/2026

DATE OF HEARING :03.07.2026
DATE OF DECISION : 10.07.2026

R. MURALIDHAR :

An investigation was taken up in respect of export of "neckties of silk" by M/s. Singh Trading Company. It was found that duty draw-back of Rs.3,57,33,582/- was claimed by them which was also granted to them. After investigation, a Show Cause Notice came to be issued to them as well as to many other Noticees including one Mr.Ajay Madan alias Jassi alias Ashutosh Birla, Director of M/s. Sam Merchandisers Pvt.Ltd. and also to the present Appellant Shri Anupam Mondal, proprietor of M/s. East India Impex. After due process, the Adjudicating authority rejected the value of the impugned goods, re-determined the value of the impugned goods, rejected the Drawback claimed on the goods exported, ordered recovery of the drawback claim. He also imposed penalties on various Noticees. In respect of the present Noticee, he has imposed penalty of Rs.25.00 Lakhs under section 114(iii) and penalty of Rs.25.00 Lakhs under section 114AA of the Customs Act, 1962. None of the other Noticees have preferred any appeal before the Commissioner(Appeals). Only the present Appellant has filed his Appeal before the Commissioner(Appeals), which came to be dismissed by him. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Counsel appearing on behalf of the Appellant submits that the purported contravention of claim of Drawback happened in respect of 456 Shipping Bills. Only 16 live consignments in respect of M/s. Cosmos Impex were intercepted on 08.05.2010. It is submitted that the Appellant is physically involved in packing the neckties in the boxes and handing over to the CHA for onward exports as instructed by the exporter. They do not have access to know about the quality of the neck ties, the value thereof etc. The Show Cause Notice does not bring in any fact as to how the Appellant was responsible for the higher value claimed for the exported neckties by the exporter. The only issues raised in respect of the Appellant is that he had abetted Shri Ajay Madan alias Jassi alias Ashutosh Birla in creating fake identity for him

by way of obtaining Driving Licence in a fake name which helped him to open a bank account. One point was also made about the appellant receiving money to the extent of Rs.3.50 lakhs from Jassi and handing over to Shri Debasish Mukherjee [Another notice with various counts of contraventions]. She submits that no specific contraventions in respect of the Customs Act / Rules have been brought in with proper corroborative evidence by the Revenue against the appellant.

3. Ld.Counsel takes me to Para 41 of the Order-in-Original, wherein the findings about the above issues have been given by the Adjudicating authority.

4. Ld.Counsel submits that the alleged contravention neither calls for penalty under Section 114 nor for any penalty under Section 114AA of the Customs Act, 1962. She relies on the case law of **M/s. R.S. Arunachalam v. Commissioner of Customs (Tri.-Chennai)** and **Kailash Bahiru Jadhav v. Commissioner of Customs (Exports), (Tri-Mumbai)**. In these decisions it has been held that if there are any violations which have occurred, only the provisions of CBLR 2013 can be invoked against the concerned person.

5. The Ld.Counsel also relies on the case law of **Jai Balaji Industries v. Commr. of Customs, Visakhapatnam [2018 (361) ELT 429 (AP)]**, for setting aside the penalty imposed under Section 114AA.

6. In view of the above submissions, she prays that the penalties imposed under Section 114(iii) and Section 114AA may be set aside.

7. The Ld.AR appearing on behalf of the Revenue submits that the Appellant has actively abetted in the contraventions. The Appellant himself has admitted in the recorded statement under Section 108 that he has helped Ajay Madan alias Jassi alias Ashutosh Birla in obtaining false Driving Licence which has helped him in opening the bank account. This account in turn has facilitated the movement of Drawbacks granted in these bank accounts. Further the investigations have also shown that the Appellant has withdrawn Rs.3,50,000/- and handed over to Shri Debashish Mukherjee. These factual details show that the Appellant was one of the important persons in the contraventions and in the illegal claim of Drawback. Accordingly, he justifies the penalties imposed.

8. He further submits that without prejudice this stand, since it is clear that the Appellant has committed contraventions which has resulted in disbursal of falsely claimed Drawback, even the penalty under Section 117 of the Customs Act, 1962 could be applicable and imposable on the Appellant. Therefore, he prays that the Appeal may be dismissed.

9. Heard both sides and perused the appeal papers.

10. I find that this is a case where huge amount of drawback has been claimed by the exporter in respect of consignments relating to 456 Shipping Bills. From the Show Cause Notice, it is seen that the drawback claims were claimed by M/s.Singh Trading Company and M/s. Sam Merchandisers Pvt.Ltd. prior to 2010 and after April 2010 the goods are being exported in the name of M/s. Cosmos Impex. It is also alleged in the Show Cause Notice that the main person involved in all these exports is Ajay Madan alias Jassi alias Ashutosh Birla. He never appeared when the summons were issued to him, nor any Statement was recorded from him, nor has he come forward to defend the SCN issued to him for such a huge contravention. The present proceedings have been initiated purely based on the interception of 16 Shipping Bills on 08.05.2010. While the goods under these 16 consignments have been detained and tests have been conducted, in respect of the past about 440 consignments, the same were allowed to be exported without any proper examination. The Department has recorded statements under Section 108 of the Customs Act, 1962 from various persons and initiated the recovery proceedings in respect of the Drawback sanctioned, in respect of all the 456 consignments. The statement of the present Appellant Shri Anupam Mondal has been recorded on 30.06.2010, extract of which is found at Para 19 of the Show Cause Notice which is reproduced below:

19. Statement of Anupam Mondal was recorded under Section 108 of the Customs Act, 1962 on 30.06.2010, wherein he *inter alia* admitted and/or submitted the following [RUD-13]:-

a) that he knows 'Jassi' who is one Shri Ajay Madan of M/s. Sam Merchandisers of Patiala, who is also known as Ashtosh Birla;
b) that he has created fake identity for the said Ajay Madan alias 'Jassi', which was used for opening a bank account in Barasat;
c) that Jassi had earlier sent him neckties in bulk, which he packed and delivered to Debasis Mukherjee for exports;
d) that on 13.05.2010, Jassi deposited Rs.3,50,000/- in his SBI bank account (No.30799196931) and he withdrew and delivered the said money to Debasis Mukherjee under instructions of the said Ajay Madan alias Jassi;

11. On going through the Order-in-Original I find that the Commissioner has recorded his findings at Para 41 which is reproduced below :

41. "I find that Shri Anupam Mondal, Proprietor of M/s. East India Impex, R/o Balaka Housing Complex, Bamangachi, 24 Parganas (North), West Bengal, PIN -743706 has abetted Shri Ajay Madan alias Jassi alias Ashtosh Birla, by creating fake identity for him, by helping him open a bank account using the said fake identity, by receiving money from him in his bank account and handing it over to Debasis Mukherjee for the purpose of the subject exports of neckties. He is, therefore, liable to penalty under section 114 & section 114AA of the Customs Act, 1962."

12. A harmonious reading of the contravention alleged in the Show Cause Notice and the findings given by the Order-in-Original, shows that the Appellant has helped the mastermind Jassi alias Ashutosh Birla to obtain one fake Driving Licence. In turn, this fake Licence has been used for opening the bank account. While this act of the Appellant is clearly illegal and may also make him liable for criminal proceedings, this fact alone, on its own, cannot prove that the Appellant had played a specific role in the over-valuation and mis-classification of exported

goods in respect of the 456 Shipping Bills and Drawback claim thereof. Further, the intercepted and seized consignment is towards only 16 Shipping Bills. In respect of balance 440 Shipping Bills, the entire case is built upon the recorded statements only, without any corroborative evidence. It is also seen from the records that the Department could not locate Ajay Madan alias Jassi alias Ashutosh Birla. As could be observed, this person has not madeany submission in his defence when the SCN was issued to him. In such a case, the alleged contraventions against the present appellant are confined only to the above referred recorded statement and the findings of the Adjudicating authority without any proper corroboration. On a prima facie basis, no specific material has been brought in by the Revenue to pin the appellant to the alleged contraventions.

13. After considering these factual details, I have gone through Section 114(iii) and Section 114AA of the Customs Act, 1962. The relevant portions are reproduced below:

114. Penalty for attempt to export goods improperly, etc.

Any person who, in relation to any goods, does or omits to do any act which act or *omission would render such goods liable to confiscation* under section 113, or abets the doing or omission of such an act, shall be liable, -

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((iii) *in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater*.

114AA. Penalty for use of false and incorrect material.

> *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

14. In the present case I do not find that any evidence has been brought in by the Revenue to the effect that the exporter has inflated the value wherein the Appellant has played any specific role. Further, the goods in respect of 440 consignments were already exported, and were not available for confiscation even. It is also well settled that the test report in respect of the present consignments on its own cannot be applied for any previously cleared goods. In the present instance, at the most, the Revenue could have brought in a proper and specific detail towards contraventions in respect of the 16 live consignments, against the appellant, which has not been done.

15. Therefore, I do not find that any specific case has been made out to impose the penalty under Section 114(iii) of the Customs Act 1962, on the appellant. Hence, I set aside the penalty imposed under Section 114(iii).

16. I also find that there is no allegation that the appellant was responsible for filing of documents. Admittedly, the appellant has not

filed any document or signed any document or statement which is false or incorrect in respect of the impugned consignments. The help rendered by him in obtaining the Driving Licence illegally in a fake name, while would be treated as a criminal offence but does not fall under any of the category of the contraventions specified under Section 114AA. Therefore, I hold that the penalty imposed under Section 114AA is also legally not sustainable.

17. Now, coming to the point canvassed by the Ld.AR for the Revenue, wherein he has submitted that penalty under Section 117 may be imposed. Section 117 reads as under :

> **117. Penalties for contravention, etc., not expressly mentioned.**
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> *Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to penalty not exceeding [four lakh ruppes.]*

18. In order to impose penalty under Section 117 the Show Cause Notice should have been issued seeking to impose a penalty under this Section. On going through the Show Cause Notice, I find that in respect of the present Appellant the Show Cause Notice has proposed penalty only under Section 114 and Section 114AA as can be seen from Para 47(n) of the Show Cause Notice which is reproduced below:

n) Shri Anupam Mondal, Proprietor of M/s. East India Impex, R/o Balaka Housing Complex, Bamangachi, 24 Parganas (North), West Bengal, PIN -743706 has abetted Shri Ajay Madan alias Jassi alias Ashtosh Birla, by creating fake identity for him, by helping him open a bank account using the said fake identity, by receiving money from him in his bank account and handing it over to Debasis Mukherjee for the purpose of the subject exports of neckties. He is, therefore, liable to penalty under section 114 & section 114AA of the Customs Act, 1962.

19. Therefore, in the absence of any Show Cause Notice being issued seeking to impose penalty under Section 117, Revenue is precluded from raising the issue of penalty under this Section at this stage. Therefore, the prayer by the Ld. AR to impose penalty under Section 117 cannot be entertained.

20. In view of the foregoing, the Appeal stands allowed. The Appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open Court on 10.07.2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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