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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75328 of 2024

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/KS/788/2023 dated 09.10.2023 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road Kolkata-700001)

M/s. Arghya Sengupta, **: Appellant**
Son of Shri Partha Sengupta,
242,P.K. Guha Lane, Modern Park, Dumdum, Kolkata-700028

VERSUS

Commissioner of Customs (Port.) **: Respondent**
Custom House, 15/1, Strand Road Kolkata-700001

APPEARANCE:

MS. Atika Sumran Ahmed, Advocate for the Appellant
Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75942/ 2026

DATE OF HEARING: 24.06.2026
DATE OF PRONOUNCEMENT: 28.07.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. Kol/Cus(Port)/KS/788/2023 dated 09.10.2023 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road Kolkata-700001, wherein, among others, penalties have been imposed on Shri Arghya Sengupta, the Appellant herein under Sections 112 (a), (b) and Section 114AA of the Customs Act, 1962.

2. Brief facts of the case are that specific intelligence gathered by the officers indicated that M/s Puskar Tradecom Pvt Ltd. was importing 'Paraquat' while falsely declaring it as 'Industrial Washing Liquid' in two consignments imported through Kolkata Seaport and NSCBI Air Cargo Complex. Samples from one of the consignments were tested and found to contain Paraquat, not Industrial Washing Liquid and the case was adjudicated upon culmination of the investigation.

2.2. Further enquiries launched into past shipments, and additional evidences gathered during investigation indicated that similar mis-declaration in was made in respect of Bill of Entry No. 8426063 dated 03.02.2017, implicating several individuals including Customs House Agent S. Murugan and the appellant Shri Arghya Sengupta.

2.3. During his statement made before investigating authorities, Shri Sengupta admitted to using S. Murugan's license for clearance, receiving instructions from Shri Manoj Agarwal, and knowing that the actual goods were Paraquat, not "Liquid Industrial Soap". It appeared to the department that Arghya Sengupta's involvement as a middleman in facilitating the illicit importation of Paraquat under false declarations was evident. Accordingly, Show Cause Notice was issued to the appellant asking for explanations regarding penalties imposable under Section 112(a) and/or 112(b), and Section 114AA of the Customs Act, 1962.

2.4. Following the initial investigation, a subsequent inquiry was launched into the past shipments imported by M/s Puskar Trade com Pvt Ltd (referred to as the "Importer"). On April 8, 2021, another

Show Cause Notice (SCN) was issued against the importing firm, as well as individuals including Shri. Keyal, Shri. Montosh Kumar Saha, Shri. Netai Hari Majumder, who is a partner of M/s. Ocean Shipping and Clearing Agency (CB), and Shri. Tarun Kumar Manna, a staff member of M/s. Ocean Shipping and Clearing Agency. This action was taken due to the importation of Paraquat (classified under CTH 38089390) under the false declaration of "Washing Liquid for Industrial Use," as indicated in Bill of Entry 4895114 dated April 13, 2016.

2.5. During further investigation into the matter, it was revealed that the Customs House Agent (CHA) named S. Murugan, holding License No. R-80, had filed the aforementioned Bill of Entry, and Shri. Arghya Sengupta, with G Card No. 112/25, had gathered the necessary documents for the Import clearance. These documents were collected from Shri. Manoj Agarwal, one of the Directors of M/S Puskar Trade com Pvt Ltd., and subsequently handed over to Shri. Swarup Sana, who holds G-Pass No. CHN/R-80/2010/01 (G), for the submission of Import clearance documents. It was also established that Shri. Arghya Sengupta was present at the Dock during the processing of the Import clearance on behalf of M/S. Puskar Tradecom Pvt Ltd. As a result of these findings, summonses were issued to the individuals involved for the purpose of recording their statements under Section 108 of the Customs Act, 1962.

2.6. In his statement dated February 25, 2022, Shri Swarup Sana, who serves as both a salaried staff member and the Authorized Person of S. Murugan (Customs House Agent or CHA) confirmed his role as the Authorized Person responsible for the preparation and signing of all import documents, including Bill of Entry (B/E), and also for visiting the Customs House for the clearance of imported goods. When specifically questioned about Bill of Entry No. 8426063 dated 03.02.2017, he stated that no testing of samples had been conducted for that particular case. He mentioned that Mr. Arghya Sengupta had prepared and presented all the necessary documents to the Customs authorities for the purpose of processing the Import clearance. Shri Swarup Sana had merely signed these documents on behalf of his company. Shri Swarup Sana also stated that Mr. Arghya Sengupta was responsible for collecting clearance orders from various importers and would prepare all the required documentation. Mr. Arghya Sengupta used to be present during the verification and clearance processes before customs after obtaining authorization from Shri Swarup Sana. He also added that for allowing use of the S. MURUGAN, CHA's License, Mr. Arghya Sengupta used to pay him Rs. 12,000/- per month.

2.7. In his statement dated March 1, 2021, Shri Arghya Sengupta and the appellant in the present case, with G Card No. 112/25, stated the following:

(i) He used to receive orders for the clearance of imported goods from various importers. He then used to prepare all the required import documents based on the documentation provided by these importers and proceed to clear the consignments through the Customs House Agent (CHA), S. Murugan. S. Murugan has its Chennai address as Room no-07, RSSR Complex, 3rd Floor, Chennai-600001 (License

No. R-80) and also maintains a Kolkata office at 4, Fairley Place, Room No. 618, Kolkata-1. His father, Mr. Partha Sengupta (G-PASS NO. 1-12/17 and GP-784/18), has been a salaried staff member of CHA S. Murugan's Kolkata office since 2016.

(ii) He used the license of M/s. S. Murugan for these clearance activities and stated that he had obtained authorization from Mr. Swarup Sana, who is the authorized person of M/s. S. Murugan, for a monthly payment of Rs. 12,000/-.

(iii) He mentioned that he was familiar with Shri Manoj Agarwal, one of the Directors of M/S Puskar Tradecom Pvt. Ltd., who dealt with him in the context of imports for his firm. Shri Manoj Agarwal personally provided the necessary documents for the preparation of import clearance documents.

(iv) After the clearance process, the imported goods were handed over to the transporter, and the relevant documents, along with money receipts and bills, were delivered to the office of M/S Puskar Tradecom Pvt. Ltd. After a delay of 7 days, Shri Arghya Sengupta used to receive a payment of Rs. 8,500 in return.

(v) In response to a specific query about Bill of Entry No: 8426063 dated February 3, 2017, he confirmed that, although the documents described the goods as "Liquid Industrial Soap," they were actually Paraquat, as informed to him by Mr. Manoj Agrawal. He also stated that no samples were drawn for this Bill of Entry. During the container examination, he was present, and the Customs officers, as per a Group order, broke the Steamer Agent seal and opened the container. A 5% physical verification of the goods was conducted.

(vi) Shri Arghya Sengupta further added that Mr. Manoj Agarwal instructed him to clear the materials without drawing samples or conducting a chemical test, as the actual product was Paraquat. Mr. Manoj Agarwal assured him that all related import documents would indicate the goods as "Liquid Industrial Soap."

2.8. Thus, it appeared to the investigating agency that Shri Arghya Sengupta played a pivotal role as a middleman in facilitating the illicit importation of the goods covered by Bill of Entry No. 8426063 dated 3.02. 2017. He gathered all the necessary documentation from Mr. Manoj Agarwal and carried out the clearance procedures at the dock using M/s. S. Murugan (the CHA)'s license. Subsequently, he handed over the goods to the transporter and the related documents to the importer, M/s. Puskar Tradecom Pvt Ltd. It became evident that Shri Arghya Sengupta actively participated in the clearance process while being fully aware that Paraquat was being imported under the false declaration of "Liquid Industrial Soap" in the said Bill of Entry. Shri Arghya Sengupta's deliberate actions in assisting M/s. Puskar Tradecom Pvt Ltd. in the clearance of mis-declared cargo render the impugned goods subject to confiscation under Section 111 of the Customs Act, 1962. Consequently, it appeared that Shri Arghya Sengupta's acts and omissions make him liable to penalties under Section 112(a) and/or Section 112(b), and Section 114AA of the Customs Act, 1962.

2.9. Accordingly, a Show Cause Notice No. No S206 (Misc)- 79/2021 Appr Gr.II dated 05/01/2022 was issued to the appellant *interalia* proposing penalty on him under section 112(a) or 112(b) and 114AA of the Customs Act, 1962.

2.10. The Ld. adjudicating authority vide O-I-O No. KOL/CUS/ADC/PORT/63/Gr. II/2022 dated 17.10.2022 imposed a penalty of Rs. 1,50,000/- upon the appellant under Section 112(b) of Customs Act, 1962. He also imposed another penalty of Rs. 4,00,000/-under Section 114AA of the Customs Act, 1962 upon the appellant.

3. Being aggrieved by and dissatisfied with the said impugned Order, the appellant preferred the instant appeal on the following grounds:

A. Adjudicating Authority wrongly considered that the appellant is the authorized G card holder of S. Murugan and he has the prior full knowledge/information about the said importation and/or consignment covered under Bill of Entry No 8426063 dated 03.02.2017.

B. Adjudicating Authority wrongly and arbitrarily held that the appellant is the middleman and helped Shri Manoj Agarwal who is one of the Directors of M/s Puskar Tradecom Pvt. Ltd, in carrying out the illegal importation of the impugned goods covered under bill of entry no. 8426063 dated 03.02.2017. Further, the Adjudicating Authority wrongly considered that the appellant collected all relevant documents from Mr. Manoj Agarwal and did all the clearance work at Dock using the License of S. Murugan, CHA and finally handed over the goods to the transporter.

C. Adjudicating Authority also could not specifically point out any seizure documents which were intended to be filed as alleged in the proceeding. Furthermore, there is no light of evidence/material to show and/or to suggest that the documents pertaining to the seized goods have transpired through the appellant.

D. Adjudicating Authority has failed to appreciate that since the allegations have been brought against the appellant in mainly based upon the statement of the noticee No. 4 (Manoj Agarwal) his cross examination was sought, which was blatantly denied by the Ld. Adjudicating Authority without showing any reasonable cause of rejection. It is in gross violation of the principles of natural justice.

E. Adjudicating Authority has failed to consider that the entire case is based upon uncorroborated statements of the parties to the SCN and there is no piece of evidence which substantiate the allegations so stated in the SCN against the appellant, based upon which proposition for penalty under Section 112 (a) (b) has been made. The Adjudicating Authority has not taken into account that it is a settled position of law that statements of co-accused without any corroborative evidences thereof cannot be utilized as a ground for penalization.

F. Adjudicating Authority has failed to consider that the recovery of goods described in the Bill of Entry No. 8426063 dated 03.02.2017 cannot be the sole cause for imposition of penalty. Involvement and specific knowledge must be present for invocation of Section 112 of Adjudicating Authority has failed to consider that the recovery of goods described in the Bill of Entry No. 8426063 dated 03.02.2017 cannot be the sole cause for imposition of penalty. Involvement and specific knowledge must be present for invocation of Section 112 of upon the appellant.

G. Adjudicating Authority has failed to appreciate that in the present case, the appellant cannot be brought under the domain of Section 114AA of Customs Act, '62 which deals with situation of intentionally making or using declaration statement or documents which is false or incorrect in the transaction of any business for the purpose of Customs Act. The said Section is intended to penalize situation where there are paper transaction without any actual import or export of goods. In the present case, the department has no case that the transaction was paper transaction only and no goods were imported by the Appellant and therefore, penalty imposed under Section 114AA of the Customs Act, '62 upon the appellant is not at all warranted.

H. There is no case that the Appellant has done any act which is specified under Section 114AA of the C.A.'62 in other words none of the ingredients to invoke Section 114AA of the CA, '62 is available against the Appellant. The Appellant's case gains force from the ratio of the judgments/decisions of the case laws-

(i) Jai Balaji Industries -Vs- Commissioner of Customs, Visakhapatnam reported in 2018 (361) ELT 429 (AP) and

ii) Sameer Santosh Kr. Jaiswal -Vs- Commissioner of Customs (Import-II), Mumbai reported in 2018 (362) ELT 348 (Tri.-Mum.)

4. In view of the above submission, the appellant prayed for setting aside the penalties imposed on him in the impugned order.

5. The Ld. A.R. submitted that the Appellant has actively involved facilitating the mis declaration of the goods imported. Thus, he justified the penalties imposed in the impugned order on the Appellant.

6. Heard both sides and perused the appeal documents.

7. We find that the issue involved in the present appeal is mis declaration of classification of the goods imported by the importer, M/s. Puskar Tradecom Pvt Ltd. Allegation against the Appellant Shri Arghya Sengupta is that he was actively involved in the clearance process and facilitated the clearance of the mis-declared goods.

7.1. From the records, we find that the appellant has gathered all the necessary documentation from Mr. Manoj Agarwal, one of the Directors of the importing Firm and carried out the clearance procedures at the docks using the CHA License of M/s. S. Murugan. Subsequently, he handed over the goods to the transporter and the related documents to the importer, M/s. Puskar Tradecom Pvt Ltd. Thus, it is alleged that the Appellant Shri Arghya Sengupta has actively participated in the clearance process, while being fully aware that Paraquat was being imported under the false declaration of "Liquid Industrial Soap" in the said Bill of Entry.

7.2. We observe that as a Custom House Clearing Agent, the appellant receives orders for the clearance of imported goods from various importers. The Appellant then files the Bills of Entry on the basis of the documentation provided by the importers and proceeds to clear the consignments through the Customs House Agent (CHA), S. Murugan. In the present case, we find that Shri Manoj Agarwal, one of the Directors of M/S Puskar Tradecom Pvt. Ltd, has personally handed over the necessary documents to the Appellant for the preparation of import clearance. The Appellant facilitated the clearance of the goods filing the Bills of Entry with the Customs Authorities.

7.3. In the present case, we find that mis declaration of the description/classification of the goods imported in the Bill of Entry No. 8426063 dated 03.02.2017 is sole cause for allegation against the Appellant. We find that the Appellant has filed the documents along with the Bill of Entry on the basis of the documents provided to him by the Importer. If the department has any doubt about the description or classification of the goods, then they were free to draw the samples and propose re-classification of the goods. The Appellant, being a Custom House Agent cannot be alleged mis-classification of the goods.

7.4. Further, we find that the entire case of the department is based on the statement of Shri. Manoj Agarwal, one of the Directors of M/S Puskar Tradecom Pvt. Ltd, the importing Firm. As the allegation against the Appellant is solely based on the statement of Shri. Manoj Agarwal, the Appellant has sought for his cross examination. We find that the Ld. Adjudicating Authority has blatantly denied the request for cross examination without showing any reasonable cause of rejection, in gross violation of the principles of natural justice. As there is no evidence against the Appellant other than the statement of Shri Manoj Agarwal, we observe that such uncorroborated statement cannot be used as evidence against the Appellant. It is a settled position of law that statements of co-accused without any corroborative evidences thereof cannot be utilized as a ground for penalization. As there is no other evidence other than the statements of the co-accused to substantiate the allegations against the Appellant, we hold that no penalty can be imposed on the Appellant under Section 112 (a) (b) of the Customs Act, 1962.

7.5. Regarding the penalty imposed under Section 114AA of the Customs Act, we find that the appellant cannot be brought under the domain of Section 114AA of Customs Act, '62 which deals with situation of intentionally making or using declaration statement or documents which is false or incorrect in the transaction of any business for the purpose of Customs Act. The said Section is intended to penalize situation where there are paper transaction without any actual import or export of goods. In the present case, the department has no case that the transaction was paper transaction only and no goods were imported by the Appellant and therefore, penalty imposed under Section 114AA of the Customs Act, '62 upon the appellant is not at all warranted. As there is no case that the Appellant has done any act which is specified under Section 114AA of the C.A.'62, we hold that none of the ingredients to invoke Section 114AA of the CA, '62 are available against the Appellant. We find that the above view is supported by the ratio of the judgments/decisions of the case laws-

(i) Jai Balaji Industries -Vs- Commissioner of Customs, Visakhapatnam reported in 2018 (361) ELT 429 (AP) and

ii) Sameer Santosh Kr. Jaiswal -Vs- Commissioner of Customs (Import-II), Mumbai reported in 2018 (362) ELT 348 (Tri.-Mum.)

7.6. Thus, by relying on the ratio of the decisions cited supra, we hold that the penalty imposed on the Appellant under Section 114AA of the Customs Act, '62 is not sustainable and hence we set aside the same.

8. In the result, we set aside the penalties imposed on the Appellant under Section 112 (a) (b) and Section 114AA of the Customs Act, 1962 and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 28.07.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP