CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

CUSTOMS APPEAL NO. 86126 OF 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1687/2021-22 dated 23.02.2022 passed by the Commissioner of Customs (Appeals), Mumbai).

KHUSHBOO SCIENTIFIC PRIVATE LIMITED Appellant
151, 15th Floor, Maker Chamber II,
Nariman Point, Mumbai-400 021.

VERSUS

COMMISSIONER OF CUSTOMS (IMPORT) ....Respondent
MUMBAI (AIR CARGO IMPORT)
Air Cargo Complex, Navpada,
Sahar Village, Andheri East,
Mumbai-400099.

APPERANCE:

Shri Kartik Dedhia, Advocate for the Appellant
Shri K. Azad, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86041/2026

Date of Hearing: 15.07.2026
Date of Decision: 21.08.2026

In this appeal, legality of the order passed in confirming penalty of Rupees Two lakhs under Section 117 of the Customs Act 1962 on the appellant is assailed by the importer appellant.

2. Fact of the case, as revealed from the appeal memo and written note, would go to show that appellant is engaged in the business of import and supply of scientific and laboratory testing instruments. It had placed an order with its German supplier M/s. Coesfeld for import of scientific equipments in respect of import of goods covered under invoice No. 541497

dated 26.02.2021, for an assessable value of Rs. 2,38,087/-. Appellant filed Bill of Entry No. 3184049 dated 17.03.2021, cleared the goods upon payment of customs duty amounting to Rs. 69,718/- after obtaining out of Charge on 19.03.2021/-. Upon opening of the consignment, appellant noticed that the shipment contained certain additional items which were not noted in the invoice, for which appellant contacted the supplier and ascertained from it that both the purchases of appellant were disbursed in one consignment with two different invoices but the supplier had inadvertently failed to sent invoice No. 541498 dated same, under which goods worth of Rs. 26,74,480/- was being disbursed that should give rise to differential duty liability of Rs. 7,41,754/-. Immediately appellant informed the Customs Authorities voluntarily about such discrepancy vide its letter dated 25.03.2021, within six days of clearance of goods and requested for cancellation of Out of Charge with re-assessment of goods so that differential duty could be paid. The appellant's supplier also communicated a letter to the Commissioner of Customs regarding such inadvertent error but despite the mistake being communicated to the Customs Authorities by the appellant that showed its bonafideness, the above referred penalty was imposed on the appellant by the proper officer, who passed the Order-in-Original directing for re-assessment. Appellant's unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to the present forum.

3. During course of hearing of the appeal, Ld. Counsel for the Appellant Mr. Kartik Dedhia submitted that appellant had volunteered to point out the discrepancy and offered to pay the differential duty even after Out of Charge was granted to it, for both the consignments brought under one invoice that would show that there was no *mens rea* or evil intention to evade payment of duty on the part of the appellant and instead of going with the directive issued for self-assessment–2011 by the CBIC under Chapter-I para 2.2 wherein it has been clearly directed to the field formation that penal provision would not be invoked in cases of bona-fide errors in self-assessment where *mens rea* or willful intention to evade duty or non-compliance of a condition cannot be proved, such a penalty has been imposed under Section 117 of the Customs Act. He further submitted that Section 114 penalties could have been imposed in case of such contravention of the provisions of Customs Act since express penalty provision has been provided under the Act but, in the instant case, even

when going by the Department's allegations such importation of goods, though not willful, can be considered as improper importation of goods for which penalty under Section 112 & 114 are available in the statute, invocation of Section 117 to impose penalty on the appellant, is an irregularity that is required to be remediated by this Tribunal.

4. Per-contra, Ld. Authorised Representative Mr. K. Azad argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and even has gone to extent of saying that even if the exact detail is not supplied in the Bill of Entry due to ignorance also, Section 117 penalty is imposable though, he candidly considered that express Provision also available in the Statute to deal with such contingencies.

5. I have gone through the appeal paper book and relevant documents attached as relied upon documents including copy of letter received from the Supplier, as attached at page 34, addressed to the Commissioner of Customs, Sahara Airport and the request letter of appellant submitted to the Dy. Commissioner of Customs requesting for re-assessment of bill of entry for which Out of Charge was granted and clearance was made on 19.03.2021. The content of the letter is self-explanatory and going by its para-6, it would give a clear knowledge of the intention of the appellant that after verification made upon receiving the material, they came to know that they had received material against both of their orders for which they want to include the lately received left out invoice No. 541498 dated 26.02.2021 in the Bill of Entry for re-assessment of the same and requested to the Dy. Commissioner to do the needful re-assessment. This being the fact on record, and there having no trace of proof that at any point of time Customs Department would have known such irregularities, had it not been pointed out by the appellant, who also volunteered to rectify the mistake by way of payment of required customs duty for the entire consignment.

6. I am, therefore,of the considered view that penalising the appellant for exhibiting its loyalty to the said State, that to under a provision of law for which express penal provision is available, is unsustainable in the present circumstances. It would not only be unethical but also of the nature of an oppressive act, which no democratic country like India would ever intend to promote. Hence the order.

The Order

7. The appeal is allowed and Order passed by Commissioner (Appeals) vide Order-in-Appeal No. MUM-CUSTM-AMP-APP-1687/2021-22 dated 23.02.2022 imposing Two lakhs penalties under Section 117 of the Customs Act 1962 on the appellant is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 21.08.2026)

(Dr.Suvendu Kumar Pati)
Member (Judicial)

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