CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. IV

CUSTOMS APPEAL NO. 50468 OF 2026

[Arising out of Order-in-Appeal No. CC(A)CUS/D-I/EXPORT/NCH/1176-1178/2025-26 dated 03.10.2025 passed by the Commissioner of Customs (Appeals), New Delhi]

HIMALYANI GUPTA **.....APPELLANT**

C/o M/s Dewar World Design Private Limited
B-1 Ext., A 41, First Floor,
Mohan Cooperative Industrial Estate
New Delhi-110044

Vs.

Commissioner of Customs ACC Exports **....RESPONDENT**

Air Cargo Complex (Export)
New Customs House,
New Delhi-110037

WITH
CUSTOMS APPEAL NO. 50471 OF 2026

[Arising out of Order-in-Appeal No. CC(A)CUS/D-I/EXPORT/NCH/1176-1178/2025-26 dated 03.10.2025 passed by the Commissioner of Customs (Appeals), New Delhi]

DEWAR WORLD DESIGN PRIVATE LIMITED **.....APPELLANT**

B-1, Ext. A 41, First Floor, Mohan Cooperative
Industrial Estate,
New Delhi 110044

Vs.

COMMISSIONER OF CUSTOMS ACC EXPORTS **....RESPONDENT**

New Custom House, Near IGI Airport
New Delhi 110037

WITH
CUSTOMS APPEAL NO. 50472 OF 2026

[Arising out of Order-in-Appeal No. CC(A)CUS/D-I/EXPORT/NCH/1176-1178/2025-26 dated 03.10.2025 passed by the Commissioner of Customs (Appeals), New Delhi]

GAURAV GUPTA **.....APPELLANT**

C/o M/s Dewar World Design Private Limited
B-1 Ext.. A 41, First Floor,
Mohan Cooperative Industrial Estate,
New Delhi-110044

Vs.

COMMISSIONER OF CUSTOMS ACC EXPORTS **....RESPONDENT**
New Custom House, Near IGI Airport
New Delhi 110037

Appearance:

Shri B.L. Garg Advocate for the Appellants
Shri Rohit Issar, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 51391-51393 /2026

DATE OF HEARING: 14/08/2026
DATE OF DECISION: 24/08/2026

P.V. SUBBA RAO

The order dated 3.10.2025 passed by the Commissioner (Appeals) rejecting the appeals of the three appellants herein and upholding the Order in original dated 15.1.2025 passed by the Additional Commissioner insofar as it pertains to the appellants is assailed in these three appeals.

2. When the matter was called, learned authorised representative for the Revenue submitted that the order of the Additional Commissioner was passed against several noticees including these three appellants and therefore these appeals may be kept pending to see if others also will file appeals so that all appeals can be taken up together. However, I find that these three appeals are against the order of the Commissioner (Appeals) passed only in respect of these three appellants and in it she upheld the order of the Additional Commissioner only insofar as it pertains to these three appellants. I have therefore, proceeded and heard both sides and perused the records.

3. **M/s. Dewar World Design Private Limited**[1] is a garment designer firm of Ms. **Himalyani Gupta**[2] and her son Shri **Gaurav Gupta**[3]**. Dewar** designed some garments and wanted to export them to its customer in USA and for that purpose had obtained the **Importer Exporter Code**[4] from the Director General of Foreign Trade[5] but it had not obtained the GST registration yet.

4. Being new to the business of export of garments, Dewar contacted a freight forwarder **M/s Nitco Air Express**[6] who offered a single window solution including clearance through the Customs. **Nitco** explained that without GST registration **Dewar** could not export goods in its own name but the goods could instead, be exported through another exporter and that the goods would be delivered to **Dewar's** customer in USA. Learned counsel submits that no foreign exchange was involved because only a sample was to be sent to the customer in USA.

5. Thereafter Nitco filed shipping bills in the name of one **Hiba Enterprises**[7] using its IEC. Investigations revealed that **Hiba** was neither aware of nor did it consent to exporting the goods of Dewar in its name. **Nitco** had the credentials of **Hiba** because of some past transaction and using the credentials, it exported goods of several parties including Dewar misusing its IEC without the knowledge of **Hiba.**

6. After investigation, a Show Cause Notice was issued to 20 noticees including the three appellants herein. The proposals in it

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1 Dewar
2 Himalyani
3 Gaurav
4 IEC
5 DGFT
6 Nitco
7 Hiba

were decided by the Additional Commissioner in her Order in original. The findings in the order insofar as these three appellants is concerned was as follows:

> **"B. i) M/s DEWAR WORLD DESIGN PRIVATE LIMITED :**- I hold that the export goods having declared FOB value of Rs. 9.26 lakh exported under claim of duty drawback amounting to Rs.1,810/- (S Nos 1 to 10 of Table 33.1, in Para 33 of the impugned Show Cause Notice) on someone else IEC i.e., M/s Hiba Enterprises to camouflage the identity of M/s DEWARWORLD DESIGN PRIVATE LIMITED by way of using fake invoices / fictitious documents with an intent to avail undue export incentives / fraudulently under drawback scheme. have been rendered liable to confiscation under Section 113(i) and 113(ia) of the Customs Act 1962 read with Section 50 of the Customs Act, 1962, Regulation 3(1) of the Foreign Exchange Management (Export of Goods and Services) Regulation 2000 and Rule 11 of the Foreign Trade (Regulation) Rules, 1993 and Rule 14(2) of the Foreign Trade (Regulation) Rules. 1993, further read with provisions of "The Foreign Trade (Development & Regulation) Act, 1992" and further read with Para 2.05 of the FTP, 2015-20 and Para 2.08 of the HBP (2015-20). Since the exported goods (S Nos 1 to 10 of Table 33.1, in Para 33 of the impugned Show Cause Notice} were not available for confiscation, fine in lieu of confiscation is not levied under Section 125(1) of the customs Act, 1962 on the aforesaid goods (S Nos 1 10 10 of Table 33.1, in Para 33 of the impugned Show Cause Notice):
>
> ii) I demand the claimed Drawback to the tune of Rs. 1,810/- fraudulently availed on the IEC of M/s Hiba Enterprises. and order recovery in terms of under Section 75 of the Customs Act, 1962 read with Rule 16 of the erstwhile Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 and further read with read with Rules 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 2017;
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> iii) I also impose penalty of Rs. 5,000/- (Rs. five thousand only) on each of the entities, M/s Dewar World Design Pvt. Ltd., Mr. Gaurav Gupta, Director & Ms. Himalyani Gupta, Director under Section 114(iii) of the Customs Act. 1962 as discussed supra;
>
> iv) 1 also impose penalty of Rs.5,000/- (Rs. Five thousand only) on each of the entities, M/s Dewar World Design Pvt. Ltd., Mr. Gaurav Gupta, Director & Ms. Himalyani Gupta, Director under Section 114AA of the Customs Act. 1962 as discussed supra;
>
> v) I also demand interest on claimed Drawback to the tune of Rs. 1,810/- fraudulently availed by them, and order recovery under Section 75A(2) of the Customs Act, 1962 read with Section 28AA of the Customs Act, 1962 from them."

7. On appeal, the Commissioner (Appeals) passed the impugned order upholding the above order. The three issues in the order with respect to the appellant are:

a) Denial and recovery of drawback of Rs. 1,810/- with interest under section 75A of the Customs Act, [8]1962

b) Imposition of penalties on the three appellants under section 114 of the Act; and

c) Imposition of penalties on the three appellants under section 114AA of the Act.

Denial and recovery of drawback of Rs. 1,810/- with interest

8. On this issue, the submission of the learned counsel for the appellants is that **Dewar** never received any drawback at all and hence the question of recovering it does not arise. He submits that no goods were exported in the name of **Dewar** and hence no drawback was received either.

9. Learned authorised representative for the Revenue supported the impugned order.

10. I find that the process of filing of shipping bills by the exporters, export general manifest (EGM) by the shipping lines, the sanction of drawback all take place through the Indian Customs EDI System (ICES). Once the Shipping Bill is filed and Let Export Order (LEO) is given by the officer of customs and the corresponding EGM is filed by the shipping line indicating that the goods have, indeed, been shipped, the shipping bill goes into the drawback queue and once it is processed and approved by the Assistant Commissioner it gets added to the scroll which is sent to the bank at the end of the day. The bank will debit Government account and credit the bank accounts of the IEC holders. If the goods were exported with the IEC of **Hiba,** the drawback would automatically get credited to the account of **Hiba.**

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8 Act

Admittedly, no shipping bill has been filed in the name of **Dewar** and hence no drawback could have been credited to its account. Therefore, the question of recovery of drawback from **Dewar** does not arise. However, if the department has any evidence to show that any drawback has been paid to **Dewar**, it has to repay the same along with applicable interest. Recovery of wrongly paid drawback is in the nature of an execution proceeding and no adjudication is required for the purpose.

Penalties under section 114 of the Act

11. Penalties under section 114 can be imposed for acts or omissions which rendered goods liable to confiscation under section 113. Sections 113 and 114 of the Act read as follows:

> **"SECTION 113. Confiscation of goods attempted to be improperly exported, etc.**
>
> The following **export goods shall be liable to confiscation**:-
> (a) ******
> (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;
> (ia) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;
> *******
> **Section 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**, -
> (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;
> (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:
> **Provided** that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of 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 penalty so determined;
> (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."

12. Under section 113, various categories of 'export goods' can be confiscated. 'Export goods' means, as per section 2(19) of the Act, 'goods which are to be taken out of India to a place outside India'. Once the goods are taken out of India to a place outside India, they will cease to be 'export goods' and will be 'exported goods' and they will move out of the jurisdiction of the Customs Act. After that, even if the goods are brought back, they will be re-imported goods and NOT export goods. Section 113 provides for confiscation of only export goods and not exported goods and nothing in this section suggests anything to the contrary.

13. The garments of **Dewar**, as is evident from the order of the Additional Commissioner cited above, were exported and they were no longer export goods and hence the finding that they were liable to confiscation is contrary to section 113 and hence cannot be sustained.

14. Consequently, the penalties imposed on the three appellants herein under section 114 also need to be set aside.

Penalties under section 114AA

15. Section 114AA of the Act reads as follows:

> **"Section 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."

16. In this case, neither **Dewar** nor **Himalyani** nor **Gaurav** filed any documents, made any statements or made any declarations under the Act. It is **Nitco** which filed false shipping bills in the name of **Hiba** without its knowledge and exported the goods of **Dewar.** From the statements of **Himalyani** during investigation, it is clear that the appellants were completely new to the export business and for that reason had contacted **Nitco** who offered a single window clearance and further said that the goods could be exported through someone else so as to reach the customers of **Dewar** in USA.

17. It was clearly violation of the Foreign Trade (Development &Regulation) Act, 1992 to export goods using someone else's IEC but in the facts of the case, evidently, the appellants had no knowledge of the laws and procedures and **Nitco** not only mislead them but also mislead others and further misused the IEC and other details of **Hiba** without its knowledge. Thus, I do not find any evidence to establish that any of the three appellants herein had any knowledge or intent of making false declaration, statement or document before customs. For this reason, the penalty imposed on the appellants under section 114A cannot be sustained and needs to be set aside.

18. All three appeals are allowed and the impugned order is set aside with consequential relief to the appellants.

[Order pronounced on **24/08/2026**]

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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