CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 5

Customs Appeal No. 86579 of 2015

[Arising out of Order-in-Original CAO No. CC-RS/04/2015-16 Adj. (I) ACC dated 29.04.2015 passed by Commissioner of Customs (Import), Air Cargo Complex, Mumbai.]

Kapal Suresh Pansari .... **Appellant**
Director of M/s Rashi Peripherals Pvt. Ltd.,
5th Floor, Aristo Huose,
Junction on N.S. Phadke Road & Telli Gali,
Andheri (East), Mumbai – 400 069.

Versus

Commissioner of Customs (Import) .... **Respondent**
Air Cargo Complex, Sahar
Andheri (East)
Mumbai – 400 099.

Appearance:

Shri. Bharat Menon, Advocate for the Appellant

Shri Mahesh Patil, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86205/2026

Date of Hearing: 21.08.2026
Date of Decision: 28.09.2026

Per: M.M. PARTHIBAN

This appeal has been filed by Shri Kapal Suresh Pansari, Director of M/s Rashi Peripherals Private Limited, Mumbai (herein after, referred to as "the appellant", for short) assailing the Order-in-Original CAO No. CC-RS/ 04/2015-16 Adj. (I) ACC dated 29.04.2015 (herein after, referred to as "the impugned order") passed by Commissioner of Customs (Import), Air Cargo Complex, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

3.2 The appellant herein is a co-noticee in the show cause proceedings initiated against an importer M/s Rashi Peripherals Private Limited, Mumbai in respect of mis-classification of imported goods viz., "Removable or Exchangeable Disc Drives". The Show Cause Notice dated 04.09.2013 issued in this regard, was adjudicated by the Commissioner of Customs in the impugned order by rejecting the declared classification of impugned goods under Customs Tariff Item (CTI) 8471 7020 and by revising the classification under CTI 8471 7030; consequently, denying exemption benefits claimed by the importer and confirmed the differential customs duty demands under Section 28 of the Customs Act, 1962 along with interest on the importer company M/s Rashi Peripherals Private Limited, Mumbai and imposed penalty equal to duty and interest under Section 114A ibid. Besides the above, the learned Commissioner of Customs had also imposed penalty of Rs. 1,40,00,000/- in respect of consignments imported through Air Cargo Complex, Sahar and Rs.35,000/- for importation through Jawaharlal Nehru Customs House, under Section 112(a) ibid for the appellant's role as Director of the import company.

3. Learned Counsel appearing for the appellant submitted that customs duty demand in respect of importer company arising from the same impugned order in the case of *Rashi Peripherals Private Limited Vs. Commissioner of Customs (Import)* has already been decided by the Tribunal vide Final Order No. A/87663/2019 dated 09.12.2019 in favour of the appellant importer therein. Therefore, he pleaded that since the main appeal filed by the importer company has been decided in their favour, the impugned order imposing penalty on the appellant is not sustainable. Therefore, he submitted that the appeal preferred by them may be allowed.

4. Learned Authorised Representative (AR) for Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the records of the case.

6. The issue involved in this appeal is to examine whether the appellant is liable for imposition of penalty under Section 112(a) of the Customs Act, 1962 and whether such penalty imposed in the impugned order is legally sustainable.

7.1 In the impugned order, learned Commissioner has *inter alia* dealt with the role of the appellant and recorded as follows:

> *"29.(A1) With respect to the goods imported by M/s Rashi Peripherals Pvt. Ltd., Mumbai through Air Cargo Complex, Sahar, Mumbai, Shri Kapal Suresh Pansari, Director of M/s. Rashi Peripherals Pvt. Ltd. Is liable to penalty under Section 112(a) of the Customs Act, 1962 for suppression of facts, willful mis-declaration, omissions and commissions which has rendered the impugned goods liable to confiscation under section 111, as discussed above.*
>
> *xxxx xxxx xxxx xxxx*
>
> *(B1) With respect to the goods imported by M/s. Rashi Peripherals Pvt. Ltd., Mumbai through JNCH, Nhava Sheva, Raigad, Shri Kapal Suresh Pansari, Director of M/s. Rashi Peripherals Pvt. Ltd., Mumbai is liable to penalty under Section 112(a) of the Customs Act, 1962 for suppression of facts, willful mis-declaration, omissions and commissions which has rendered the impugned goods liable to confiscation under Section 111, as discussed above.*
>
> *xxxx xxxx xxxx xxxx*
>
> *30.(**A**) With respect to the goods imported by M/s. Rashi Peripherals Pvt. Ltd., Mumbai through Air Cargo complex, Sahar, Mumbai.*
>
> *(V) I hold the goods of the declared CIF value of Rs. 79,59,70,497/- (Rupees Seventy Nine Crores Fifty Nine Lakhs Seventy Thousand Four Hundred Ninety Seven only) as listed at Annexure-A to the Show Cause Notice liable for confiscation under Section 111(m) of the Custom Act, 1962. Since the goods are not physically available, redemption fine is not imposable (As discussed in para 26 above).*
>
> *xxxx xxxx xxxx xxxx*
>
> *(A1) I impose a penalty of Rs. 1,40,00,000/- (Rupees One Crore Fourty Lakhs only) under Section 112(a) of the Customs Act, 1962 on Shri Kapal Suresh Pansari, Director of M/s. Rashi Peripherals Pvt. Ltd., Mumbai.*
>
> ***(B)** With respect to the goods imported by M/s. Rashi Peripherals Pvt. Ltd., Mumbai through JNCH Nhava Sheva, Raigad.*
>
> *(v) I hold the goods of the declared CIF value of Rs. 16,69,500/- (Rupees Sixteen Lakhs Sixty Nine Thousand Five Hundred only) as listed at Annexure-B to the Show Cause Notice liable for confiscation under Section 111(m) of the Customs Act, 1962. Since the goods are not physically available, redemption fine is not imposable (As discussed in para 26 above).*
>
> *xxxx xxxx xxxx xxxx*
>
> *(B1) I impose a penalty of Rs. 35,000/- (Rupees Thirty Five Thousand only) under Section 112(a) of the Customs Act, 1962 on Shri Kapal Suresh Pansari, Director of M/s. Rashi Peripherals Pvt. Ltd., Mumbai."*

Therefore, he had imposed penalty on the appellant under Section 112(a) ibid.

7.2 In order to examine the disputed issue, we would like to refer to the relevant legal provision under Section 112(a) ibid, which is extracted below:

> ***"Section 112. Penalty for improper importation of goods, etc.***
>
> *Any person,—*
> *(a) 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 111, or abets the doing or omission of such an act, ….*
>
> *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:…"*

On perusal of the impugned order, particularly the relevant extract as reproduced at paragraph 7.1 above, it clearly transpires that the impugned goods have not been imposed with redemption fine upon confiscation under Section 111(m) ibid on the ground that these are not physically available at the time of adjudication by the learned Commissioner of Customs. In the absence of confiscation of impugned goods and resultant imposition of redemption fine under Section 125 ibid being absent in the adjudication order, we find that there is no legal basis on which the appellant could be fastened with the penal liability under Section 112(a) ibid.

8.1 Further, we also find that the this Tribunal in the appeal filed by the importer company against same impugned order in the case of *Rashi Peripherals Private Limited* (supra) had set aside the duty demands and penalties in respect of importer company, vide Final Order No. A/87663/2019 dated 09.12.2019. The extract of the relevant paragraphs is given below:

> *"3. We find that the issue arising out of the present dispute of classification of the above impugned goods is no more res integara, in view of the decision of this Tribunal in the case of CC, New Delhi Vs. Supertron Electronic Pvt. Ltd. – 2017 (357) ELT 401 (Tri.) and Sony India Pvt. Ltd. Vs. CC – 2018-TIOL-1445-CESTAT-DEL. Vide orders dated 06.01.2017 and 13.03.2018 respectively, this Tribunal has held that the impugned goods should appropriately be classifiable under Tariff Item 84717020. Civil Appeals filed by Revenue against the said orders of the Tribunal were also dismissed by the Hon'ble Supreme Court vide orders dated 25.10.2017 and 18.10.2019 respectively. Further, we also find that the co-ordinate bench of this Tribunal in the case of M/s. Neoteric Infomatique Ltd., vide final order No. A/85477/2019 dated 12.03.2019 has upheld the classification of the disputed goods under Tariff Item 84717020.*

> *4. In view of the above settled position of law with regard to classification of the disputed goods, we do not find any merits in the impugned order, insofar as it has changed the classification of goods, resulting in confirmation of the adjudged demands on the appellant. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the appellant."*

8.2 In view of the foregoing discussions and analysis, and the order of the Tribunal in the case of *Rashi Peripherals Private Limited* (supra), we do not find any merits in the impugned order passed by the learned Commissioner, to the extent it had imposed penalty on the appellant under Section 112(a) ibid.

9. In the result, the impugned order 06.05.2015 passed by the learned Commissioner to the extent challenged before us is not sustainable and the appeal is allowed in favour of the appellant.

(Order pronounced in open court on 28.09.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha