CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 10474 OF 2026

[Arising out of Order in Original MUN-CUSTM-000-COM-66-2025-26 dated 16/03/2026 passed by Commissioner of Customs, Mundra]

M/S. D D INTERNATIONAL GLOBAL **...Appellant**
Harchand Mill Road,
Mandi, Gobindgarh

VERSUS

COMMISSIONER OF CUSTOMS-MUNDRA CUSTOMS **...Respondent**
Office Of the Pr. Commissioner of Customs
Custom House, Mundra, Kutch,
Mundra Port and Special Economic Zone,
Mundra, Kachchh, 370421, Gujarat

WITH

CUSTOMS APPEAL NO. 10475 OF 2026

[Arising out of Order in Original MUN-CUSTM-000-COM-66-2025-26 dated 16/03/2026 passed by Commissioner of Customs, Mundra]

Saakshat Dhir
Partner Of M/s. D D International Global,
Harchand Mill Road,
Mandi, Gobinadgarh **... Appellant**

VERSUS

COMMISSIONER OF CUSTOMS-MUNDRA CUSTOMS **...Respondent**
Office Of the Pr. Commissioner of Customs
Custom House, Mundra, Kutch,
Mundra Port and Special Economic Zone,
Mundra, Kachchh, 370421, Gujarat

Appearance:
Present for the Appellant :D Legal Advocates & Consultants
Present for the Respondent: Shri Aakash Singh, Superintendent (AR)

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10777-10778/2026

DATE Of HEARING : 11/09/2026
DATE Of DECISION:09/10/2026

SOMESH ARORA

On 11.09.2015, the officers of Custom House, Mundra examined Five containers unloaded at Mundra from vessel MV Ville De Aquaris and found that

out of five, three containers contained 376 boxes of cigarettes alongside scrap stated therein.

1.1 On 16.09.2025, the officers examined 07 more containers that were unloaded at Mundra from vessel MV Ville D'Orion and found a total of 24 boxes of cigarettes alongside scrap stated therein. The said containers were covered by bill of lading.

1.2 The goods were covered by Bills of Lading Nos. 03700206/0019010/16 dated 04.09.2025 (05 containers), 03700206/0019947/16 dated 10.09.2025 (03 containers) and 03700206.0019941/16 dated (04 containers) describing the goods as "LMS Bundle". All 03 Bills of Lading mentioned the details of consignor and consignee as M/s. Al Mehtab Trading Co. LLC, Dubai and M/s. D. D. International Global, Mandi Gobindgarh respectively and were issued at Jebel Ali. No bill of entry was filed in respect of goods covered by aforesaid Bills of Lading.

1.3 Since the Bills of Lading bore the name of appellant as consignee, department recorded statement of Shri Subhash Dhir and Shri Saakshat Dhir, partners of appellant. Both of them denied having placed any order with M/s. Al Mehtab Trading Co. LLC, Dubai for any goods, be it scrap or cigarettes found contained in the containers under reference. Shri Subhash Dhir duly confirmed that the appellant had business relations with the said M/s. Al Mehtab Trading Co. LLC, Dubai and they had purchased scrap in the past from the said supplier.

1.4 In the course of investigation, Shri Saakshat Dhir, partner, under letter dated 06.01.2016, informed the investigation officer that on enquiry with shipper M/s. Al Mehtab Trading Co. LLC, it was learnt that they had booked containers for export of scrap at the instance of Shri Bharat Sangwa and that the goods were consigned in the name of appellant so that goods can be properly cleared. Copy of the letter dated 06..01.2016 is part of the record.

1.5 As per the appellant on 11.08.2016, Show Cause Nolle was issued to both the appellants by relying upon statement dated 11.01.2016 of Shri Collin George, Manager of shipping line (M/s. Caravel Logistics Pvt. Ltd.), wherein, it is inter alia recorded that Shri Saakshat Dheer was sending emails to them by using email id dhirs@almehtab.ae [though (i) it is categorically noted in the show cause notice that domain name almehtab.ae belongs to the supplier M/s Al Mehtab Trading LLC and not appellant (ii) there is no evidence to support the narrative of Shri Collin George that it was Shri Saakshat Dheer who sent emails.

1.6 On 03.08.2018, an addendum to show cause notice was issued after recording statement of Shri Saakshat Dhir on 20.07.2018. In his statement, Shri Saakshat Dhir, inter alia, informed the officer that as per the information made available by the shipper, goods were shipped at the instance of Shri Ravi Jain and Shri Vipin Jain and appellant was named as consignee to ensure that the supplier shall exercise control over the goods until they receive the sale proceeds of the same.

1.7 As per the appellants, no inquiry was caused with the overseas supplier, Shri Bharat Sangwa, Shri Ravi Jain and Shri Vipin Jain. No independent and technical evidence was brought on record to substantiate the statement of Shri Collin George that email address dhirs@almehtab.ae was used to the appellants despite the admitted position that domain name almehtab.ae belonged to overseas supplier based in Dubai and it was used by Shri Saakshat Dhir to give instructions to the shipping line by using the said email id (and domain name). It is not even brought on record as to who created the email id dhirs@almehtab.ae and how could it be used by any third party including Shri Saakshst Dhir.

1.8 The overseas supplier who shipped the goods is not made a co-noticee though the primary responsibility to ensure that goods are found in conformity with the description mentioned in the bills of lading squarely lay with him.

1.9 As per the appellant, the entire notice also does not bring on record an iota of evidence to show that appellants had placed any order with the overseas supplier for supply of any goods, be it scrap or cigarettes.

1.10 Ld. Commissioner adjudicated the show cause notice read with addendum and imposed penalty on both the appellants, viz. M/s. D. D. International Global and Shri Saakshat Dhir, partner on relying on the statement of Shri Collin George, Manager of M/s. Caravel Shipping Pvt. Ltd. and the emails sent by the shipping line M/s. Carevel Shipping Pvt. Ltd. to email id dd@ddig.co.in and dhirs@ddig.co.in. which, was presumed to have been replied by Shri Saakshat Dhir from email id dhirs@almehtab.ae. Aggrieved by the order of commissioner, appellants have filed the present appeal.

1.11 The appellant in grounds of appeal submits that the impugned order is liable to be quashed and set aside on the following amongst other grounds, including those advanced in the appeal memo:

(i) There is no evidence to show that they had placed any order with M/s. Al Mehtab for supply of any item, including scrap. Hence, there is no justification to hold their involvement in import of unmanifested cigarettes under consideration.

(ii) The statement of Shri Collin George is unreliable, being factually incorrect inasmuch as he has stated that they have not received any payment relating to 12 containers whereas it is duly mentioned on the Bills of Lading that freight is prepaid.

(iii) Ld. Adjudicating Authority has nowhere disclosed the basis to believe the statement of Shri Collin George that Shri Saashwat Dhir used to reply emails by using email id-dhirs@almehtab.ae, i. e. by using the domain belonging to M/s. Al Mehtab. Ld. Adjudicating Authority has failed to comply with the requirement of section 138 B (1)(b) of Customs Act, 1962 inasmuch as it has failed to examine

Shri Collin Geoge as a witness and offer him for cross-examination by appellants.

(iv) Ld. Adjudicating Authority has failed to comply with the requirement of Section 138C (2) and 138 C (4) of Customs Act, 1962 dealing with admissibility of electronic records, while relying upon the emails supposedly supplied by Shri Collin George, considering that the alleged emails were not recovered from any device, server or account belonging to either appellant, were supplied by a third party, which were not accompanied by original electronic record, server logs, meta data, IP-address data or chain-of-custody record; which were not certified by the person controlling the computer system; which contained different addresses, namely, dhirs@ddig.co.in, dd@ddig.co.in, dhirs@almehtab.ae none of which have been shown as authorized, operated or controlled by Shri Saakshat Dhir.

(v) The finding that Shri Saakshat Dhir sent the email from dhirs@almehtab.ae is unsupported by any evidence. The domain admittedly belonged to the overseas supplier, M/s. Al Mehtab Trading LLC and not to the appellants. A screenshot showing ownership of the supplier's domain cannot establish who created or operated a particular mailbox. No attempt was made to obtain information from the domain register, mail-box creation or user records, login and IP-address logs; conformation from Al Mehtab Trading LLC, forensic examination of the appellant's computers or phones and matching emails from the appellant's own devices. Attribution of an email account to Shri Saakshat Dhir merely because it contained the expression "dhirs" amounts to conjecture. It is a settled law that no penalty can be imposed on the basis of conjectures.

(vi) Ld. Adjudicating Authority has not cited any evidence to hold the appellants as owners or persons "holding themselves out" as importers considering that the appellants did not file any bill of entry, claim ownership, seek delivery or clearance, pay or undertake to pay the supplier, possess the original bills of lading, place any purchase order or make any declaration before Customs concerning these goods. The Bills of Lading and IGM was generated and filed respectively by the shipper and shipping line. The mere unilateral insertion of a person's name as consignee cannot, without proof of consent or adoption, establish that such person was the owner or held himself out as importer under the provisions of section 2 (26) of Customs Act, 1962.

(vii) There is no evidence to suggest that the appellants directly or indirectly caused import of goods.

(viii) Department has not recovered any invoice or sale contract LMS bundles, advance payment, banking transaction, ledger entry, letter of credit, payment demand by the supplier, payment of freight, consideration for the cigarettes or evidence of expected profit or beneficial ownership.

(ix) Department has failed to investigate the overseas supplier, Shri Bharat Sangwa, Shri Ravi Jain and Shri Vipin Jain (whose names were given by the overseas supplier for sending the goods to India by showing the name of appellant as consignee in the bills of lading).

(x) The statements of appellants are not self-inculpatory. Even the sole statement of Shri Collin George that is relied by Ld. Adjudicating Authority does not establish that appellant had placed any order with the overseas supplier for supply of any goods.

2. The AR places reliance on the findings in impugned order particularly para 55 to 59 reproduced below;

"CONFISCATION OF GOODS-

55. The Show cause notice has proposed confiscation of cigarettes total 1,10,33,600 sticks of various brands valued at Rs. 6,96,25,200/- under Section 111(f), 111(i), 111(l) and 111(m) of the Customs Act, 1962 and confiscation of metal scrap bundles used to conceal the smuggling of cigarettes weighing 256.76 MTs valued at Rs. 59,05,480/- under Section 119 of the Customs Act, 1962. The notices contend that the invocation of Sections 111(f), 111(i), 111(l) and 111(m) of the Customs Act, 1962 is legally untenable, as the seizure pertains to the year 2015, prior to the amendment of Section 111(f), and further, the Import Manifest is filed by the shipping line and not by the consignee. They further submit that in the absence of filing of any Bill of Entry or statutory import declaration by them, no concealment, misdeclaration, violation of prohibition, or contravention of any licensing condition can be attributed to them merely on the basis of entries in the Bill of Lading.

55.1 The extract of Section 111 of the Customs Act, 1962 is reproduced below:-

111. Confiscation of improperly imported goods, etc.—

The following goods brought from a place outside India shall be liable to confiscation:—

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an (arrival manifest or import manifest) or import report which are not so mentioned;

(j) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 (in respect thereof), or in the case of

goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

55.2 Section 111 opens with the expression "The following goods brought from a place outside India shall be liable to confiscation...". Thus, the liability to confiscation under Section 111 attaches to goods brought from a place outside India, irrespective of whether such goods are ultimately cleared for home consumption or not. The provision is intended to cover not only regular imports but also smuggled goods and attempted illicit imports intercepted at any stage after importation. Therefore, the absence of a Bill of Entry does not, by itself, take the goods outside the ambit of Section 111, though the applicability of individual clauses must be examined with reference to their specific statutory ingredients.

Confiscation under Section 111(f)

Section 111(f) applies to goods which are required to be mentioned in the Import Manifest or Import Report but are not so mentioned. In the present case, the concealed goods i.e. foreign origin cigarettes were not reflected in the Import General Manifest filed under Section 30 of the Customs Act on the basis of the Bills of Lading. Thus, the essential requirement of Section 111(f) is satisfied, and the impugned goods are liable to confiscation under Section 111(f).

Confiscation under Section 111(i)

Section 111(i) covers goods which are found concealed in any manner so as to evade detection by Customs authorities. In the present case, the foreign-origin cigarettes were concealed inside metal scrap bundles declared as "LMS Bundles". Such concealment was designed to evade customs examination and detection. Therefore, I find that the impugned cigarettes are liable to confiscation under Section 111(i) of the Customs Act, 1962.

Confiscation under Section 111(l)

Section 111(l) provides for confiscation of goods which are not accounted for in a Bill of Entry or which are in excess of those entered in the Bill of Entry. A plain

Reading of this clause makes it clear that its application presupposes the filing of a Bill of Entry under Section 46 of the Customs Act. In the present case, it is an admitted position that no Bill of Entry was filed in respect of the impugned consignments, as the goods were intercepted and seized prior to any such filing. In the absence of a Bill of Entry, the question of goods being "not accounted for" or being "in excess of those entered" does not arise. Consequently, Section 111(l) is not attracted in the facts of the present case.

Confiscation under Section 111(m)

Section 111(m) provides for confiscation where goods do not correspond in respect of value, description, quantity or any other particular with the entry made under the Act or with the declaration or documents produced. The applicability of Section 111(m) is confined only to cases where a Bill of Entry has been filed. Accordingly, I hold that the impugned goods are not liable to confiscation under Section 111(m) of the Customs Act, 1962.

55.3 As regards the metal scrap declared as "LMS Bundles", it is evident that the same was used for concealment of foreign-origin cigarettes and thereby facilitated the attempted smuggling. Accordingly, the metal scrap weighing 256.76 MTs valued at Rs. 59,05,480/- is liable for confiscation under Section 119 of the Customs Act, 1962.

55.4 In this regard, I observe that upon confiscation, the impugned goods stood vested in the Central Government in terms of Section 126 of the Customs Act, 1962. Consequently, the Department proceeded to dispose of the said goods by way of auction, as discussed in the succeeding paragraph of this

order. In view of the fact that the goods have already been disposed of, the imposition of redemption fine under Section 125 of the Customs Act, 1962 does not arise.

DISPOSAL OF GOODS-

56. The seized foreign origin cigarettes were disposed through e-auction after following the due process of law and the amount of Rs. 1,43,05,500/- was realised.

56.1 The metal scrap weighing 256.76 MTs valued at Rs. 59,05,480/- declared as "LMS Bundles", used for concealment of foreign-origin cigarettes has been disposed through e-auction after following the due process of law and the amount of Rs. 60,15,033/- was realised.

DISCUSSION ON PENALTIES-

57. With regard to penal provision under Section 114A of the Customs Act, 1962 upon M/s. D.D International and Shri Saakshat Dhir, partner of M/s. D.D. International, I find that the said provision is linked to the determination and recovery of duty under Section 28(4) of the Customs Act. Since, in the present case, no duty demand is raised, the penal provisions of Section 114A are not attracted.

58. With regard to the proposal for imposition of penalty upon M/s. D.D International and Shri Saakshat Dhir, partner under Section 112 of the Customs Act, 1962, I find that the said provision is attracted where any person, by any act or omission, renders goods liable to confiscation under Section 111 of the Act. In the present case, it is already established that the impugned foreign-origin cigarettes were concealed inside metal scrap and brought into India in a deliberate and clandestine manner with the intent to evade customs control. Such acts and omissions have rendered the goods liable to confiscation under Section 111(f) and 111(i) of the Customs Act, 1962. Accordingly, the notices, M/s. D.D. International and Shri Saakshat Dhir, partner having engaged themselves in the improper importation and attempted smuggling of the said goods, are liable to penalty under Section 112(a) of the Customs Act, 1962.

59. With regard to the proposal for imposition of penalty under Section 114AA of the Customs Act, 1962 upon Shri Saakshat Dhir, I find that the said provision is attracted where any person knowingly or intentionally makes, signs, uses, or causes to be made or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business relating to customs. In the present case, the evidence on record establishes that Shri Saakshat Dhir actively caused the filing of an improper Import General Manifest before Customs by using Bills of Lading which falsely declared the consignments as metal scrap (LMS Bundles), while the containers were in fact used for concealment of foreign-origin cigarettes. The Import General Manifest, being a statutory declaration under Section 30 of the Customs Act, was filed by the shipping line on the basis of particulars and documents supplied by or on behalf of the importer. By providing and using such incorrect Bills of Lading for the purpose of filing of the IGM, Shri Saakshat Dhir knowingly facilitated the submission of false material particulars to Customs, thereby attracting the provisions of Section 114AA of the Customs Act, 1962. Accordingly, I hold Shri Saakshat Dhir liable to penalty under Section 114AA of the Act."

3. The advocate for the appellant made following additional submissions on 02.10.2026. He mentioned that Ld. Adjudicating Authority has held in Para 48.1 of impugned order that the appellant is squarely covered by the

expression “holding himself out to be the importer” Contained in section 2(26) of the customs Act, 1962. He submitted that the definition of "importer" contained in section 2 (26) had undergone following change (substitution) by the Finance Act, 2017 (7 of 2017) dated 31.03.2017, with effect from 31.03.2017.

Before 31.03.2017	After 31.03.2017
"importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner.	"importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

3.1 The goods arrived at Mundra port in September, 2015. Thus, the definition prior to 31.03.2017 is applicable in this case. Prior to 31.03.2017, the expression "holding himself out to be the importer" was absent in section 2(26). Consequently, the conclusion of Ld. Adjudicating Authority that appellant held himself out to be the importer and hence, he must be considered an importer, is not supported by law that existed at the material time. Therefore, the impugned order is liable to be quashed and set aside on this ground alone.

3.2 The impugned order has travelled beyond the scope of show cause notice inasmuch as the notice does not allege that the appellant held himself out to be the importer, to treat him as importer in the impugned order. Even otherwise, the appellants have never held themselves out to be the importer.

3.3 Except for the fact that the bill of entry bore the name of appellant as consignee, there is no evidence to show that the appellant had placed any order with anyone to supply scrap and/or cigarettes, had paid or had undertaken to pay anyone any amount in lieu of any goods or filed any bill of

entry or instructed any one to file bill of entry. It is submitted that the case of appellant is squarely covered by the following decisions:

I. R. S. Impex versus C. C., New Delhi, 2017 (9) TMI 925 CESTAT NEW DELHI, wherein, it is held that:

"12. In the present case, the appellant did not file bill of entry or did not commit any act or omission which will render the goods liable for confiscation. They were contesting their connection/ownership of the impugned goods. The only evidence available is Bill of Lading issued in the name of the appellant. As already noted, the appellant did not make any attempt to clear the goods or abet any other person in clearing the goods. We find the evidences, as discussed in the impugned order, are not sufficient to bring in penal consequences under Section 112 of the appellant."

II. Commissioner of Customs & Excise, Goa v/s Kabul Textiles (LLC), 2006 (206) ELT 1173 (Bom.), wherein, it is held that:

"*17... As long as no bill of entry was filed, as contemplated by Clause (m) of Section 111 of the Customs Act, 1962, the goods could not be said to have not corresponded in respect of value shown with the said entry, in the bill of entry. The CESTAT, was again right in holding that as confiscation could not be upheld, there could be no cause or penal action as well under Section 112 of the Customs Act, 1962."*

This decision is duly maintained by Hon'ble Supreme Court as reported at 2007 (218) E.L.T. A122 (S.C.).

III. D. J. Import v/s Commissioner of Cus (Preventive), New Delhi, 2022 (381) ELT 112 (Tri. - Del.), wherein, it is held that:

"6. It is further urged that appellant had cooperated with the investigation and appeared. In his statement recorded by the Customs, he had categorically stated that he did not order for any branded goods. On coming to know from the Supplier that they have dispatched also some branded goods which were not ordered, he did not file Bill of Entry. Thus, the allegation of attempting to import branded shoes, which were counterfeit, is not corroborated by any evidence on record. Admittedly, appellant have not made any payment for the goods dispatched by the Supplier. Further, reliance is placed on the ruling in the case of Pradeep Arora v. Commissioner of Customs, Chennai [2002 (150) E.LT. 1301 (Tri. - Del.), wherein under similar facts and circumstances that the importer did not file any Bill of Entry for clearance of the goods, it was held that the department

has not been able to make out a case against the appellant that they are the importers, and since no duty can be demanded from any other person, other than the importer, the order demanding duty etc. was set aside. Thus, only for the reason that the appellant was named as consignee in the Bill of Lading, that cannot be subjected to penalty. Thus, none of the violation as stipulated in Section 111 of the Act are attracted, and in absence of violation of any provision of Section 111, no penalty is imposable under Section 112 of the Act. Further, assails relying on the impugned order, no particular Section has been identified, which have been violated."

IV. Pradeep Arora v/s Commissioner of Customs, Chennai, 2002 (150) ELT 1301 (Tri. Del), wherein, it is held that:

"5...since duty can be demanded only from the importer or his agent, duty cannot be demanded from the applicant inasmuch as the applicant had not placed any order with the foreign supplier of the goods. There is no evidence to show that the payment in respect of goods was made by the applicant or the documents for clearance of the goods were cleared and taken delivery by the appellants. We also find that the appellants had not at any stage filed any Bills of Entry for clearance of the goods or any other documents at the time of clearance of the goods. Thus, we find that the Department has not been able to make out a case against the appellants that they are importers and since no duty can be demanded from any other person other than the importer or his agent, the order demanding duty from the appellant is set aside.

6. We further note that penalty has been imposed under Section 112(a). We note that penalty under Section 112(a) can be demanded only from the importer. We hold that no evidence has been adduced to prove that the appellant was the importer and imposition of penalty also set aside."

3.4 Ld. Adjudicating Authority has heavily relied upon the statement of Shri Collin George, Manager of M/s. Caravel Logistics Pvt. Ltd. However, no basis is disclosed to support the assumption made by Shri Collin George that mails received by him for container booking and other mails were sent by Shri Saakshat Dhir, Partner of appellant and no one else, including the overseas supplier himself. In absence of any evidence to support this proposition, the impugned order is rendered baseless and hence, liable to be quashed and set aside.

3.5 There is a specific legal requirement in Section 138B (1)(b) of Customs Act, 1962 to examine the person who made the statement as a witness and form an opinion that the statement should be admitted in evidence in the interests of justice. Therefore, Ld. Adjudicating Authority was required to examine Shri Collin George, before relying upon his statement. However, he has neither examined the said witness himself nor thereafter, permitted the appellant to cross-examine him, despite specific request made by appellant in this regard. Reliance is placed on the following amongst a large number of decisions to say and submit that reliance cannot be placed on untested statement, where cross-examination is denied:

(i) Vasu Hasmukhbhai Vasoya, Final Order No. 11347/2025 dated 21.11.2025 of CESTAT, Ahmedabad.

(ii) Somnath Chaudhary, Sujeet Kumar versus Commissioner of Customs. Ahmedabad, 2026 (4) TMI 1448-CESTAT, Ahmedabad.

(iii) Gobinda Das, 2023 (385) ELT 722 (Tri. - Kol)

(iv) GND Cargo Movers, 2026 (395) ELT 159 (Tri. - Del.)

(v) Shanti Swaroop Sharma, 2025 (394) ELT 305 (Tri. - Del.)

(vi) Colour Cottex Pvt. Ltd., 2025 (394) ELT 296 (Tri. - Del.)

(vii) A.R. Fabrics Pvt. Ltd., (2025) 37 Centax 331 (Tri. - Del.)

(viii) Nitin Gupta, 2026 (7) TMI 1464-CESTAT New Delhi.

(ix) M/s. Sino Import, 2025 (12) TMI 835 CESTAT Chennai.

(x) M/s. Greenwoods Exports Global Pvt. Ltd., 2025 (7) TMI 492 - CESTAT NEW DELHI

3.6 Ld. Adjudicating Authority has failed to comply with the requirement of Section 138 C (4)(b) of Customs Act, 1962 while making a general reference to the "electronic correspondence" allegedly exchanged between the appellant and shipping line (that was supposedly produced by Shri Collin George under his statement dated 11.01.2016).

As per Section 138 C (4) of Customs Act, 1962, -

"(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,

a) identifying the document containing the statement and describing the manner in which it was produced,

b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purportedly to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate, and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

3.7 It is an admitted position that the certificate in accordance with Section 138 C (4) of Customs Act, 1962, is absent. Further, the particulars of device (computer) involved in the production of document (emails) is not available on record. Without examining Shri Collin George in accordance with Section 138 B (1)(b) of Customs Act, 1962, he could not have been treated as a person occupying a responsible official position in relation to the operation/management of the relevant computer, so as to admit the copy of emails produced by him as evidence in terms of Section 138C of Customs Act, 1962. Thus, reliance placed on the statement of Shri Collin George is misplaced inasmuch as it does not comply with the conditions laid down in Section 138B and 138C of Customs Act, 1962. On this ground also, the impugned order is not tenable in the eyes of law. In this regard, reliance is placed on the decision of Hon'ble Tribunal in the case of M/s. Ruby Overseas, Shri Naushad Yunus, Partner v/s Commissioner of Customs, Chennai, 2025 (10) TMI 925-CESTAT CHENNAI.

It is prayed to consider the above submissions and citations and allow both the appeals, with consequential relief, and oblige.

4. FINDNIGS

4.1. Having gone through the rival submissions, as well as the grounds of appeal and the submissions made during the course of hearing and thereafter, we find that, in the present case, no Bill of Entry was filed, and the goods were confiscated after landing at the port on the authority of document known as a Bill of Entry. Section 2(26) of the Customs Act, 1962, defines an "importer" as follows;

> *"Importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer"*

4.2 In the instant case, we find that after the goods were imported into the territory of India, the present appellants did not file any Bill of Entry, and even when their statements were recorded, they completely denied ownership of the goods. The goods stand confiscated and therefore, have now been appropriated to the Government of India.

4.3 It is clear that, to be held as an importer, as per the prevalent definition under Section 2(26) operating at the relevant time, which was later on amended to include the beneficial importer, there are only two ways by which a person can be termed as an importer. The person should, between the time of importation, i.e. when the goods land at the port of landmass of India, and the point of time when they are cleared for home consumption, should have held himself out to be the owner or importer of the goods. The impugned order is based on incorrect and altered provisions (as amended) of Section 2 (26) and therefore, arrives at incorrect conclusion.

4.4 Section 2(25) of the Customs Act, 1962defines imported goods as follows;

> *"Imported goods: Means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;"*

4.5 It is thus clear that while action in rem can be taken against the goods which have been brought into India from a place outside India and have not been cleared for home consumption. therefore, such action has been correctly taken by the Department by confiscating the said goods. The action in personam, including levy of any penalty, can be taken only against a person who is an importer, and such status of importer can be acquired only by either being the owner of the goods or by holding out as an importer between the time of their importation and clearance for home consumption.

4.6 We find that such status, in the instant case and in the facts of the matter, has not been acquired by the appellants. We find that neither there is any Bill of Entry on record filed by the appellants in their name indicating that they were the importers, nor has any ownership of the goods been claimed by the appellants, which now stand confiscated to the Government of India.

4.7 In the absence of such status, the appellants cannot be held out as importer. On the contrary, we find that throughout investigation, they have been in denial about either the goods belonging to them or that the goods having been ordered by them. And this includes their narrative in the statements, which are not inculpatory in any relevant aspect. This itself is reason enough not to impose any penalty under Section 112 (a) or 114AA, both of which require mens rea on the part of the person concerned. On the basis of evidence on record, we cannot even hold that the appellants before us were persons who had done, in relation to any goods, any act or omission which rendered such goods liable to confiscation under Section 111 or abetted doing of such an act or omission. Section 114AA likewise requires knowledge

for intention in making or using any declaration which is known to be false or incorrect. The provisions of both the sections therefore do not get attracted.

4.8 In any case, as noted by the Tribunal in the case of InterGlobe Aviation Ltd. Vs. Commissioner of Central Excise Bangalore, 2022(379) ELT 235 (Tri-Bangalore), as per 27th report of the Standing Committee on Finance, 2005-2006, Section 114AA can apply only to fraudulent exports. Further, for penalty under Section 112(a) mens rea is required to be proved by the Department, as held by the Hon'ble Gujarat High Court in 2020(374) E.L.T. 683 (Gujarat) in the matter of Ramanagappa Shetty Vs. CC.

> *" 18. In view of the above dictum of law with regard to the statement recorded under Section 108 of the Act coupled with concurrent findings of fact arrived at by the adjudicating authority and the CESTAT, we are not inclined to interfere as no perversity is pointed out in such factual findings arrived at by the both the Authorities. For the foregoing reasons and considering Section 112(a) of the Customs Act which provides that penalty against person who in relation to any goods does of 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. Penalty can be imposed not exceeding the value of the goods or five thousand rupees whichever is greater. Therefore, invoking such provision would require mens rea on part of the appellant which is duly established on record."*

4.9 We also find substance in various discrepancies, including the lack of cross-examination of Shri Collin George as a witness, done or offered to the appellants. The non-compliance with the requirements of Section 138 C (2) and 138 C (4) of the Customs Act, especially when there was no admission or confession nor any signed verification has also been taken note of by us to hold that the collating and collection of electronic record was not proper. Mere bill of lading being in the name of appellant cannot be taken as conclusive proof of both the appellants being the importers and also of having any knowledge in respect of the offending goods being imported by them. No evidence has been brought on record to show that they had placed the order in respect of these offending. Even the freight was prepared at the other hand. The statement of Collin George is also unreliable as it indicates that he

was corresponding with the appellants through an e-mail by using domain name belonging to M/s. Almehtab. It has also not been shown as to how Almehtab, which was an overseas supplier, was related to the appellants. We, therefore, find substance in objections raised before us and the submissions made as above by the appellants.

4.10 In view of the foregoing, the penalty levied against appellant is unsustainable on the basis of evidence on record.

5. Both the appeals are allowed with consequential relief.

(Order pronounced in the open court on 09.10.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Sahil