CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 10469 OF 2026

(Arising out of OIA-MUN-CUSTM-OOO-APP-974-25-26 Dated- 31/03/2026 passed by Commissioner of CUSTOMS (Appeals)-AHMEDABAD)

GAURAV SAHAY **Appellant**
B-15, U S Villa Swaminarayan Nagar, Mundra,
Kutch, Gujarat-370421

Vs.

COMMISSIONER OF CUSTOMS (APPEALS)-MUNDRA CUSTOMS **Respondent**
Customs House Mundra, Kutch, Mundra Port and Economic Zone,
Mundra, Kutch, Gujarat- 370421

WITH

CUSTOMS APPEAL NO. 10470 OF 2026

(Arising out of OIA-MUN-CUSTM-OOO-APP-975-25-26 Dated- 31/03/2026 passed by Commissioner of CUSTOMS (Appeals)-AHMEDABAD)

GAURAV SAHAY **Appellant**
B-15, U S Villa Swaminarayan Nagar, Mundra,
Kutch, Gujarat-370421

Vs.

COMMISSIONER OF CUSTOMS (APPEALS)-MUNDRA CUSTOMS **Respondent**
Customs House Mundra, Kutch, Mundra Port and Economic Zone,
Mundra, Kutch, Gujarat- 370421

AND

CUSTOMS APPEAL NO. 10471 OF 2026

(Arising out of OIA-MUN-CUSTM-OOO-APP-976-25-26 Dated- 31/03/2026 passed by Commissioner of CUSTOMS (Appeals)-AHMEDABAD)

GAURAV SAHAY **Appellant**
B-15, U S Villa Swaminarayan Nagar, Mundra,
Kutch, Gujarat-370421

Vs.

COMMISSIONER OF CUSTOMS (APPEALS)-MUNDRA CUSTOMS **Respondent**
Customs House Mundra, Kutch, Mundra Port and Economic Zone,
Mundra, Kutch, Gujarat- 370421

Appearance:
Shri Manish Jain, Advocate for the Appellant
Shri Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10771-10773/2026

Date of Hearing : 23.07.2026
Date of Decision : 09.10.2026

Dr. AJAYA KRISHNA VISHVESHA

These appeals are directed against the impugned Orders-in-Appeal No. MUN-CUSTM-000-APP-974-25-26; MUN-CUSTM-000-APP-975-25-26 and MUN-CUSTM-000-APP-976-25-26 dated 31.03.2026 passed by Commissioner of Customs (Appeals) Ahmedabad against the appellant Gaurav Sahay through which penalties have been imposed upon the appellant under Sections 112 (a)(i), 112 (a)(ii) and 114AA of the Customs Act. As the facts of these appeals are somewhat similar, they are being disposed of by a common order. For the sake of convenience, the facts of Appeal No. C/10470/2026 Gaurav Sahay vs. Commissioner of Customs are being provided here.

1.1 Appellant Gaurav Sahay is engaged in trading of waste / sludge oil. DRI, regional unit, Gandhidham carried out examination and seizure of the imported goods pertaining to 18 consignments through 8 different importers which revealed that common set of people have been running the smuggling cartel. These 18 consignments were imported in the names of 8 different importers and therefore, import/wise separate investigations were conducted by DRI Gandhidham and separate Show Cause Notices were issued to the importers. In appeal no. 10470 of 2026, DRI Gandhidham gathered intelligence that a container bearing no. TGBU5160748 had been imported by the aforementioned persons in the name of M/s. J H Enterprises in which it is suspected that E-cigarettes have been concealed. The declared description of the goods of the said container was ‘754 carton Floor Clean MOP (HS code 96039000). About 295600 foreign brand E-cigarettes were recovered from the goods pertaining to the three containers during examination conducted at Bhiwandi godown,

Mumbai, ICD Sachin, Surat and Mundra Port respectively. The import of E-cigarettes falling under HS code no. 8543 was prohibited in terms of the DGFT Notification No. 20/2015 -2020 dated 26.09.2019 and under the Prohibition of Electronic Cigarettes (Production, manufacture, import, export, transport, sale, distribution, storage and advertisement) Act, 2019.

1.2 A search was conducted at the premises of Shri Juma Hamir Halepotra at the declared address of M/s. J. H. Enterprises. During search, certain documents were resumed. The DRI also gathered intelligence that one import consignment had been imported by M/s. J H Enterprises through a container at Mundra Port under Bill of lading dated 29.08.2022 where the declared description of goods pertaining to the container was Floor Clean MOP. During examination, gross mis-declaration and concealment of prohibited / mis-declared goods was noticed. Besides E-cigarettes, 80,000 pieces of toys, 14,000 pieces of LCD writing pads were also recovered which were not declared.

1.3 The department was of the view that these goods were liable to confiscation under Section 111 of the Customs Act and M/s. J H Enterprises had done such act which rendered the goods liable for confiscation and they knowingly concerned themselves in removing, depositing, harboring, keeping, concealing and dealing with prohibited goods liable to confiscation, therefore, they had also rendered themselves liable to penalty under Section 112 (a) and 112 (b) of the Customs Act.

1.4 Consequently, Show Cause Notice dated 30.08.2023 was issued to M/s. J H Enterprises and Ors. However, the Show Cause Notice was never served upon the appellant therefore, the appellant filed RTI application.

1.5 According to the Show Cause Notice, the appellant Shri Gaurav Sahay was an active member of smuggling cartel led by Shri Asif. He was an active

member of Whatsapp Group "Mm". He was also into the business of lending dummy IECs to Shri Asif as is evident from chat conversations in the group. From chats, it is evident that he had forwarded IEC of "Global Impex" to Shri Asif. He was also seen suggesting use of IEC of "Exemplar Trading" in the chats. Shri Gaurav Sahay was also privy to plans regarding import of prohibited goods such as E-cigarettes and restricted goods such as Toys; counterfeit mobile accessories etc. and other undervalued / mis-declared goods. Shri Gaurav Sahay was also receiving monetary benefits from Shri Asif. Shri Tahir had clearly mentioned that he had given Rs. 1,00,000/- to Shri Gaurav Sahay for his work in clearing goods pertaining to Asif. In the present case, role of Shri Gaurav Sahay in case of import of goods in the name of J. H. Enterprises came to light.

1.6 The Show Cause Notice No. GEN/ADJ/ADC/1718/2023-Adjn. dated 30.08.2023 was adjudicated vide Order-in-Original no. MCH/ADC/AKM/209/2024-25 dated 02.12.2024 passed by Additional Commissioner, who imposed penalty of Rs. 8,00,000/- upon the appellant Shri Gaurav Sahay under Section 112 (a)(i) of the Customs Act, 1962 and penalty of Rs. 5,000/- under Section 112 (a)(ii) of the Customs Act. Feeling aggrieved from the impugned Order-in-Original dated 02.12.2024, the appellant filed appeal before the learned Commissioner (Appeals) who vide impugned Order-in-Appeal dated 31.03.2026 upheld the Order-in-Original and rejected the appeal.

1.7 Show Cause Notice No. GEN/ADJ/ADC/1714/2023-ADJN dated 31.08.2023 was adjudicated by Additional Commissioner of Customs, Mundra through Order-in-Original no. MCH/ADC/AKN/175/2024-25. The learned Additional Commissioner imposed penalty of Rs. 7,00,000/- upon Gaurav Sahay under Section 112(a)(i) and Rs. 5,00,000/- under Section 114AA of the Customs Act. Feeling aggrieved from the Order-in-Original, the appeal was filed

before the Commissioner. The learned Commissioner through Order-in-Appeal no. MUN-CUSTM-000-APP-974-25-26 dated 31.03.2026 upheld the Order-in-Original and rejected the appeal.

1.8 Show Cause Notice No. GEN/ADJ/ADC/1712/2023-ADJN dated 30.08.2023 was adjudicated by Additional Commissioner of Customs through Order-in-Original No. MCH/ADC/AKM/205/2024-25 dated 27.11.2024. The learned Additional Commissioner imposed penalty of Rs. 10,00,000/- upon the appellant Gaurav Sahay under Section 112 (a)(i) and penalty of Rs. 3,00,000/- under Section 114AA of the Customs Act. Feeling aggrieved from the Order-in-Original, the appellant filed appeal before the learned Commissioner who rejected the appeal and upheld the Order-in-Original vide Order-in-Appeal no. MUN/CUSTM-000-APP-975-25-26 dated 31.03.2026.

1.9 Feeling aggrieved from the above mentioned Orders-in-Appeal, all dated 31.03.2026, the present appeals have been filed before this Tribunal.

2. The learned Counsel for the appellant submitted that in Appeal no. C/10469/2026, the Show Cause Notice dated 31.08.2023 was issued to M/s. MM Enterprises in which it was alleged that the appellant forwarded the IEC of "Global Impex" and suggested use of IEC of "Exemplar Trading". This allegation was raised entirely on the basis of statements of co-accused. In the present case, importer is not 'Global Impex' and "Exemplar Trading". The learned Counsel for the appellant also submitted that statement of co-accused were obtained under coercion and such statements cannot be relied upon. In support of his arguments, the learned Counsel for the appellant relied upon the order passed in **Smt Manidipa Debroy Chawdhary and Smt Rama Chawdhary** vs. **Commissioner of Customs** reported at 2020 (374) ELT 133 (Tri. Kolkata).

2.1 The learned Counsel for the appellant also submitted that in terms of Section 138B of the Customs Act, the statements are untenable unless

corroborated by independent evidence and subjected to cross examination. In support of the argument, the learned Counsel relied on the order passed in **Basudev Garg, Arun Gupta and Anil Goel** vs. **Commissioner of Customs** reported at 13 (294) ELT 353 (Delhi).

2.2 The learned Counsel for the appellant further submitted that findings in the impugned Order-in-Appeal are based on Whatsapp chats and the seized mobile phone taken under panchnama dated 06.09.2022. Such material constitutes inadmissible evidence. The learned Counsel supported the argument with the law laid down in the **Commissioner of Customs Mumbai** vs. **Junaid Kudiya** reported at 2024 (388) ELT 529(SC).

2.3 The learned Counsel for the appellant also submitted that in a connected inquiry, the co-accused Hanif Kapadia, Shri Parwej Alam and Dirgesh Dedhia were held not liable for penalty. The appellant stands only in the capacity of a co-accused. The learned Counsel for the appellant supported his argument by the order passed in **Hanif Kapadia** vs. **Commissioner of Customs Mundra** reported at 2025 (1) TMI 85 CESTAT Ahmedabad.

2.4 The learned Counsel for the appellant also submitted that the appellant had no knowledge of the contents of the container. In the absence of such knowledge or *mens rea,* penalty under Section 112 (a) and 114 AA cannot be imposed. The learned Counsel for the appellant supported his argument by the law laid down by Hon'ble Gujarat High Court in **M/s. Mathuradas Narayandas and Sons Ltd** vs. **Union of India** reported at 2026 (2) TMI 53 Guj. High Court and **Commissioner of Customs Export** vs. **Ravindra Kumar** reported at 2025 (9) TMI 1351 – Delhi High Court.

2.5 Regarding appeal No. C/10470/2026, the learned Counsel for the appellant submitted that the Show Cause Notice dated 30.08.2023 which was issued to M/s. J H Enterprises alleges that the appellant forwarded the IEC of

Global Impex and suggested use of IEC of Exemplar Trading. This allegation rests entirely on the statements of co-accused. In this case Global Impex and Exemplar Trading are not importers.

2.6 The learned Counsel for the appellant prayed that the impugned Orders-in-Appeal may be set aside and the appeals may be allowed.

3. The learned AR has reiterated the findings of the learned Commissioner in the said Orders-in-Appeal and prayed that the Orders-in-Appeal may be upheld and the appeals may be rejected.

4. I have heard learned Counsel for the appellant and the learned AR for the department and perused the records.

4.1 I agree with the learned Counsel for the appellant that the allegations against the appellant that "he forwarded the IEC of Global Impex and suggested use of IEC of Exemplar Trading", rests entirely on the statements of the co-accused. Such statements, if obtained under coercion, cannot be relied upon. The appellant emphatically stated that his statement was obtained under coercion and not by way of his will.

4.2 In **Manidipa Debroy Chowdhary** vs. **Commissioner**, reported at 2020 (374) ELT 133 (Tribunal-Kolkata), CESTAT Kolkata has held as follows:-

> *"It is significant to note that the entire case is made out on the basis of statement dated 23.06.2017 of Appellant No. 1. The other statements including Appellant No. 1's subsequent statement and purchase documents were discarded as afterthought. Apparently, the statement dated 23.06.2017 of Appellant No. 1 is uncorroborative in nature."*

4.3 I also agree with the learned Counsel for the appellant that for the purpose of 138B of the Customs Act, unless the statements of co-accused are corroborated by independent evidence and witnesses are subjected to cross examination they cannot be relied upon.

4.4 Section 138B of the Customs Act is reproduced below:-

"SECTION 138B. Relevancy of statements under certain circumstances.-

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any Inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannal be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice."

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court. as they apply in relation to a proceeding before a court."

From the reading of the above. It is submitted that that two steps are required to be followed by the authority:

(i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and

(ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the Interest of justice.

In the present case, as the statements of co-accused are not corroborated by independent evidence and witnesses were not subjected to cross-examination such evidence cannot be relied upon.

4.5 I also agree with the learned Counsel for the appellant that the findings in the Orders-in-Original and the Orders-in-Appeal are based on Whatsapp chats and the seized mobile phone taken under panchnama. Such material

constitutes inadmissible evidence as held in **Commissioner of Customs Mumbai** vs. **Junaid Kudiaya (supra)**.

4.6 In the present case, the statements relied upon in the impugned order and Show Cause Notice have been obtained by the department after showing to the individuals from whatsApp chat seized from the residential premises of the appellant. The adjudicating authority and the appellate authority have erred in relying upon data printed from such whatsApp chat, as the same cannot be considered as reliable or cogent evidence.

4.7 In **Commissioner** vs. **Belgium Glass and Ceramics Private Limited** reported at 2016 (337) ELT A204 (SC), Hon'ble Supreme Court has observed as follows:-

> *"The Appellate Tribunal in its impugned order had held that when appellant showing more production on many days than average production calculated on basis of consumption of Gas, their production records cannot be doubled. Further, method adopted by department in determining average consumption, not prescribed anywhere and cannot be sold to be correct or dependable for calculating clearance. There is no corroborative evidence of seizure of clandestinely removed goods or of excess stock of finished goods. There is no evidence of excess procurement of raw materials, Authenticity and veracity of data retrieved from pen drive, not reliable and cannot be accepted as a piece of evidence against Appellant in holding charge of clandestine removal."*

4.8 The learned Counsel for the appellant has also submitted copy of order passed by this Tribunal in Customs Appeal No. 10818/2024, 10819/2024 and 10820/2024 (Final Order no. 10069-10071/2026) in which the Tribunal has held as follows:-

> *"In the instant case, the appellant has been subjected to penalty as a co-accused. The Learned Advocate for the party brings to the notice of this court the decision of Division Bench in the matter of Shri Hanif Kapadia vs CC-Mundra, vide Final Order No. 13094-13108/2024 dated 05.12.2024, wherein the main accused was subjected to remand in proceedings, however the co-accused were freed from the penalties imposed on them. Learned advocate states that in this case also, the penalty on her appellants is in the capacity of co-accused only,*

and therefore to that extent the matter is covered in favour of her appellant. 2. Learned AR having gone through the judgment agrees with the position stated by the advocate. In the aforesaid position, appeals are allowable, the same are allowed with consequential relief, only in relation to three appeals of the appellant Shri Gaurav Sahay. Appeals are allowed."

On enquiry learned Authorised Representative also agreed that present issue is covered by the above decision.

4.9 It is also pertinent to mention here that the appellant has emphatically stated that he had no knowledge of the contents of the container and in the absence of such knowledge and *mens rea* penalty under Section 112 (a) and 114 AA cannot be imposed. I agree with the learned Counsel for the appellant.

4.10 In **Mathuradas Narayandas and Sons Forwarders Ltd** vs. **Union of India and ors.**, Hon'ble Gujarat High Court has held that penalties were imposed on Customs House Agent without findings of mis-declaration, fraud, overvaluation or any *mens rea,* consequently the authority misapplied statutory penalty provisions and committed jurisdictional error. The Court noted advisory guidance that in absence of complicity, prior knowledge or wrongful intent ACHA should not be penalized.

4.11 In **Commissioner of Customs Export** vs. **Ravindra Kumar** (supra) Hon'ble Delhi High Court has held that penalty under Section 114AA cannot be imposed on the appellant given the statutory documents to which mis declaration relates was the baggage declaration filed with Customs and the appellant's activities were confined to obtaining and altering airline / airway bills. Hence the knowledge plus document nexus for 114AA was absent.

4.12 In Customs Appeal No. 10642 of 2024-DB **Shri Hanif Kapadia** vs. **Commissioner of Customs-Mundra Customs** in Final Order No. 13094-13108/2024 dated 05.12.2024, this Tribunal has held as follows:-

"4.9 As regard the imposition of penalties on the co-appellants namely Shri Hanif Kapadia, Shri Parwej Alam and Shri Dirgesh Dhedhia under Section 112, 114A

and 114AA of the Customs Act, 1962, we find under Section 112(a) penalty is imposable on any person who in relation to any goods does or omits to do any act which act would render the goods liable for confiscation under Section 111 of the Act or abets the doing or omission of such act. Similarly, penalty under Section 112 (b) is imposable when a person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111. Penalty under Section 112(a) can be invoked in the situations as prescribed. In the present case, since none of the situations is covered and therefore, penalty under Section 112(a) cannot be imposed. The term "abetment" is defined under Section 107 of the Indian Penal Code 1860 as under:

> *"107.A person abets the doing of a thing, who First – Instigates any person to do that thing; or secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.:*
>
> *Explanation 1 : A person who, by willful misrepresentation, or by willfully concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing"*

Penalty under Section 112 (a) of the Act can be imposed only if it proves beyond doubt that the person concerned and by his act of omission or commission rendered the goods liable for confiscation or is held that the said goods with the knowledge or reason to believe that the same are liable for confiscation. In the present case, except the report of Chartered Engineer and statements of various persons, there are no any other evidences which shows that the Appellants abetted the offence for which the goods are liable for confiscation. In the present case undisputedly, the Appellant did not have knowledge about contents of the goods in containers and therefore, the question of abetment in the alleged offence does not arises. We also find that no evidence is adduced by the Revenue to show that the Appellant had any knowledge or reason to believe that the goods were liable to confiscation while dealing with goods.

4.10 We also find that the penalty under Section 114A is imposable only when the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts. In the present case, there is no such suppression etc. that

has resulted in any short payment of duty. Therefore, penalty under Section 114A of the Customs Act is not imposable.

4.11 We also find that penalty under Section 114AA is also not imposable on the appellants. There is no evidence on record to show that the Appellant deliberately violated the provisions of law and mis-classified the goods. The Revenue has not placed any facts to show that there was any malafide intention on the part of the Appellants in alleged mis-classifying the goods. As the ingredients for invocation of provisions of Section 114AA are absent in the present case penalty under the said section is not justified. This Tribunal's Bangalore bench has in case of Ismail Ibrahim [2019 (370) E.L.T. 1321 (Tri. - Bang.)] held as follows :

> *"6.3 ….. Further penalty under Section 114AA of the Customs Act is concerned, I find that the penalty under Section 114AA can only be imposed if the 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. Further I find that in the present case, the appellants have not made intentionally any false sign or declaration, incorrect statements or declarations to attract penalty under Section 114AA of the Act. Therefore I set aside the penalty imposed under Section 114AA of the Customs Act, 1962 on both the appellants."*

4.12 In the case of Jitender Singh [2019 (369) E.L.T. 1683 (G.O.I.) following has been held :-

> *"4. Government also agrees with the applicant's plea that penalty under Section 11AA of Customs Act, 1962 is also not maintainable in this case as the Section is attracted only where false declaration/statement document is used. But no such false declaration, etc., was made by the applicant and rather the case against the applicant is that he did not declare the TV to the Customs authorities for which Section 112 is appropriately attracted. Therefore, the justice and fairness demands that penalty of Rs. 25,000/- will be sufficient under Section 112 of the Customs Act on the applicant in this case for carrying the TV for ulterior design of smuggling of TV for monetary consideration."*

In the light of the above, there is no reason whatsoever to impose penalties on the three Appellants namely Shri Hanif Kapadia, Shri Parwej Alam and Shri Dirgesh Dhedhia, accordingly penalties imposed on the said appellants are liable to be set aside.."

4.13 In view of the above discussion, I have come to the conclusion that the impugned Orders-in-Appeal passed by the learned Commissioner are not sustainable and are liable to be set aside and the appeals deserve to be allowed.

5. Consequently, the appeals are allowed. The impugned orders-in-Appeal are set aside to the extent of imposing penalties upon the appellant Gaurav Sahay under Section 112 (a)(i), Section 112 (a)(ii) and Section 114AA of the Customs Act.

(Order pronounced in the open Court on 09.10.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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