IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Customs Appeal No.78682 of 2018
Customs Appeal No.78683 of 2018

(Arising out of Order-in-Original No.KOL/CUS/Copmmissioner/Port/54/2018 dated 29.06.2018 passed by Commissioner of Customs (Port), Kolkata)

(1) M/s Panel Pin Manufacturing Company Private Limited
(2) Shri Rakesh Doshi, Director of M M/s Panel Pin Manufacturing Company Private Limited,
(6,Raghav Koley Lane, Salkia, Howrah-711106, West Bengal)

...Appellant

VERSUS

Commissioner of Customs(Port), Kolkata
(15/1, Strand Road, Kolkata-700001)

.....Respondent

APPEARANCE

Shri Abhijit Biswas, Advocate for the Appellant
Shri R.Chakraborty, Authorized Representative for the Respondent

WITH

Customs Appeal No.78715 of 2018
Customs Appeal No.78716 of 2018

(Arising out of Order-in-Original No.KOL/CUS/Copmmissioner/Port/54/2018 dated 29.06.2018 passed by Commissioner of Customs (Port), Kolkata)

(3) Shri Amar Chandra Roy
(80/5,Sastri Narendra Nath Ganguly Road, Howrah-711104
(4) Shri Pradip Deb
(4/196, S.B.Road, Kolkata-700030)

...Appellant

VERSUS

Commissioner of Customs(Port), Kolkata
(15/1, Strand Road, Kolkata-700001)

.....Respondent

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant
Shri R.Chakraborty, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K.ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO.76564-76567/2026

DATE OF HEARING :21.08.2026

DATE OF PRONOUNCEMENT : **30 OCTOBER 2026**

Per Ashok Jindal :

All the appeals are arising out of a common impugned order, accordingly, the same are taken up together for disposal.

2.1 In respect of Appeal Nos.C/78682,78683/2018, the facts of these cases are that the Appellant No.(1) is engaged in manufacture of steel wires drawn from steel rods, which the appellant procures from Tata Steel Limited and Electrosteel Limited. For the said purpose, the appellant has a factory at 6, Raghav Koley Lane, Salkia, Howrah, West Bengal. The appellant is duly registered under the relevant provisions of the Central Excise Act, 1944 and the Central Excise Rules, 2002 for the purpose of carrying on manufacturing activity at the said factory. The Appellant No.(2) is the Director of the said Company.

2.2 The steel wires manufactured by the appellant are supplied by it to, inter alia, Larsen & Toubro Ltd., Gammons India Ltd., Emami Ltd., Bajaj Electrical Ltd. and to Government Departments, like BSF, CPWD, etc. The goods manufactured and cleared to all its customers by the appellant are duly central excise duty paid, as applicable. The appellant duly files its returns under the provisions of the Central Excise Rules, 2002 in respect of manufacture and clearances of excisable goods from the said factory.

2.3 Sometimes in the month of December 2016/January 2017 a man representing himself as one Sri Bipul Saha of 123, Andul Road, Sankrial, Howrah, visited the company's city office at 147, N.S. Road, 3rd Floor, Room No. 66, Kolkata and introduced himself as a renowned clearing and forwarding agent and an agent of import and export business. He made an offer to the Appellant No.(2), the Director of the Company to export wires manufactured by the appellant. Since the offer made and explained by him was found to be profitable in nature, the Company's said Director agreed to accept his proposal to export the company's manufactured wires to the foreign company, as would be advised by the said Bipul Saha. The commission payable by the company to the said Bipul Saha for rendering the services was also finalised.

2.4 Accordingly, the appellants, proceeded with the offer made by the said Bipul Saha, agreed to export 16 MT of manufactured steel wire to Chinalight Tri-Union International Co. Ltd., Beijing, China, in terms of an order placed by the said Chinese company, received by the Appellant company through an email sent by Bipul Saha. The said consignment was thereafter manufactured and loaded in an empty container, brought by a representative of Sri Bipul Saha to the said factory, in the presence of the jurisdictional Central Excise Officers and under their supervision whereupon, after full inspection, the concerned Central Excise Officers sealed the container. Upon completion of documentation thereafter, the said loaded container was permitted to leave the said factory premises by the said jurisdictional Central Excise Officer. The transporter, the driver and the truck in which the said container was loaded, were removed from the factory and all arrangements were made by the said Bipul Saha and freight thereof was also to be paid by him.

2.5 The said loaded container containing the said goods left the said factory premises on May 07, 2017 for Khidirpur port. Bipul Saha assured the Company's Director, Rakesh Doshi, the appellant no. 2 that the said goods would be shipped within 2 to 3 days and payment from China would be realised within 30 days from the date of arrival of the goods at the destination through bank.

2.6 The appellants were under the impression that the said goods had been duly shipped and was awaiting confirmation of shipment from the said Bipul Saha or the Customs House Agent ("CHA") engaged by him. However, on May 08, 2017, the Appellant No.(2) received a telephone call from the office of the Directorate of Revenue Intelligence whereby he was called upon to immediately meet the named officer of DRI at his office at 8, Ho Chi-Minh Sarani, Kolkata. The Appellant No.(2) duly visited the office of DRI at 2 pm on the same day and met the said named officer, who informed him that the container which had left the said factory under the seal of Central Excise authority contained, along with a part of the said goods, red sanders wood logs, a prohibited item which could not be exported. The Appellant No.(2) was further informed that out of the total loaded quantity of 16 MT of the said goods, only approximately 7 MT were found in the said container and the rest of the materials were not traceable and, in place thereof, 218 nos. of red sanders wood logs were found. The Appellant No.(2), being extremely surprised, narrated the entire facts of the case as above stated to the said DRI officer. He also immediately tried to contact the said Bipul Saha over his mobile phone but was unsuccessful.

2.7. The DRI officer thereafter informed the appellant no. 2 that the said container containing, inter alia, part of the said goods and red sanders wood contained therein were seized by the DRI authorities on May 9, 2017 under Section 110 of the Act.

2.8. Thereafter, investigation was initiated by the DRI authorities and summons were issued to, inter alia, the Appellant No.(2) and the Manager of the Company, Santanu Sarkar and their respective statements (4 and 1 respectively) were recorded under Section 108 of the Act by DRI authorities.

2.9 Thereafter on November 2, 2017 a show cause notice was issued by the Additional Director General, DRI, Kolkata Zonal Unit, under Section 124 of the Act alleging smuggling of red sanders wood. In the said show cause notice, along with the appellants, Bipul Saha alias Sandip Ghosh, the CHA, (Mallick Clearing Agency, Howrah) and four other persons were made Noticees. By the said show cause notice, inter alia, the appellants were called upon to show cause to the Commissioner as to why:

(i) the seized 8940 kgs. of red sanders wood should not be confiscated under Section 113(d) and (h) of the Act;

(ii) 7260 kgs of H.C. wire rods valued at Rs. 3,15,000/- and 254 nos. of torn gunny bags having no commercial value allegedly used for concealing the red sanders wood should not be confiscated under Section 119 of the Act;

(iii) penalty under Section 114(i) of the Act should not be imposed on the Company and the appellant no. 2 for their alleged role in the attempted smuggling of the seized red sanders wood, a prohibited item liable to confiscation under Section 113 of the Act;

(iv) penalty under Section 114AA of the Act should not be imposed upon them for alleged use of false, fake and incorrect documents in the attempting of smuggling of the seized red sanders woods, a prohibited item.

2.10 Both the Appellants filed their respective replies by letters, both dated June 25, 2018, denying the allegations contained against them and drawing the attention of the Commissioner to the correct facts of the case, which conclusively established the bona fide of the appellants and the manner in which they were duped by the said Bipul Saha and the other co-noticees. The attention of the Commissioner was also drawn to the fact that, in the meanwhile, on June 3, 2017 the company had filed an FIR against the said Bipul Saha, the transporter and his driver before the West Port Police Station, Khidirpur, Kolkata for investigation of the case against the said persons and their associates in order to get back the 9 MT of missing wire rods stolen from the container removed from the said factory.

2.11 In respect of Appeal No.C/78715/2018, Shri Amar Chandra Roy was working as Manager of M/s. Mallick Clearing Agency, a Customs Broker when he was introduced with one Shri Raj Kumar Mandal by one of his acquaintance Shri Pradip Deb for the purpose of job of CB in the export consignment of M/s. Panel Pin Manufacturing Company Ltd. Appellant duly accepted such job and received the export documents along with authorisation of the exporter through said Raj Kumar Mondal. The Container No. YMLU3576647 sealed with Central Excise Seal reached Kolkata Port from exporter when the appellant on the basis of export documents filed Shipping Bill No. 5820910 dated 03.05.2017. Such consignment was intercepted by DRI, Kolkata on 06.05.2017 and on examination of container, after breaking the seal,

Red Sanders weighing 8940 kgs. along with declared H.C. Binding Wire weighing 7260 kgs. were recovered and seized.

2.12 On completion of investigation, Show-cause notice dated 02.11.2017 was issued alleging that the appellant and others had acted as "middlemen" in collusion with Shri Sandip Ghosh alias Bipul Saha alias Bapan to facilitate the attempted smuggling of Red Sanders and accordingly, penalty was proposed to be imposed upon the appellant, amongst others, under Section 114(i) and 114AA both of the Customs Act, 19622.

2.13 That appellant under letter dated 20.12.2017 submitted his reply to the SCN and contended, inter alia, that his job was limited to the job of CB when he filed Shipping Bill in accordance to the export documents and received sealed container at Kolkata Port, which is undisputed fact. Appellant also pointed out that there is no evidence to suggest that he had any prior knowledge about the presence of Red Sanders in the said sealed container meant for export. Accordingly, appellant prayed for exoneration from penal consequence.

2.15 In Appeal No.C/78716/2018, the Appellant, Shri Pradip Deb, was working as Business Developer at M/s Swastik Clearing & Forwarding Agency when he was approached by one Raj Kumar Mondal for clearance job of one export consignment of M/s. Panel Pin Manufacturing Company Ltd. Initially, appellant, being partner in M/s. P.S. Shipping & Logistic, wanted to do the clearing job through his firm but later decided not to do the job through his said firm and accordingly, introduced Shri Raj Kumar Mondal to Shri Amar Chandra Roy, Manager of M/s Mallick Clearing Agency who ultimately acted as Customs Broker in the said export consignment.

2.16 The consignment of H.C. Binding Wire loaded in container and sealed with Central Excise Seal reached Kolkata Port from M/s. Panel Pin Manufacturing Company Ltd. for export under Shipping Bill No.5839010 dated 03.05.2017 when DRI, Kolkata intercepted the same and on examination, after breaking the seal, found the container to be stuffed with declared goods along with Red Sanders and accordingly, the same were seized.

2.17 On completion of investigation, the Show-cause notice dated 02.11.2017 was issued alleging that the Appellant and others had acted as "middlemen" in collusion with Shri Sandip Ghosh alias Bipul Saha alias Bapan to facilitate the attempted smuggling of Red Sanders and it was presumed that appellant had prior knowledge of presence of Red Sanders in the container for which he shifted the clearing job to M/s. Mallick Clearing Agency and accordingly, penalty was proposed to be imposed upon the appellant, amongst others, under Section 114(i) and 114AA both of the Customs Act, 1962.

2.18. The Appellant under letter dated 20.12.2017 submitted his reply to the SCN and contended, inter alia, that there is no evidence on-record to suggest that he had played any role with respect to seized consignment apart from introducing Shri Raj Kumar Mondal to Shri Amar Chandra Roy, which is admitted by both such noticees and hence, he prayed exoneration from any penal consequence. Appellant had duly pointed out that there is no allegation that the Central Excise Seal on the container was fake or forge.

2.19 The matters were adjudicated vide Order-in-Original dated 29.06.2018 wherein the ld.Commissioner of Customs (Port) held that the appellant and others had "acted as middlemen" and "were knowingly assisted the smuggling of the Read Sanders and were part

of smuggling syndicate" and hence, he is liable for penal action u/s 114(i) of the Customs Act, 1962.

2.12 Against the said order, the appellants are before us.

3. The ld.Counsel, Shri Abhijit Biswas, for the Appellant Nos.(1) & (2), submits that the penalty imposed on the appellant company is patently erroneous, self contradictory, contrary to law and hence, the same are untenable and unsustainable. From the findings of the Commissioner in the said order itself, along with other materials on record, it is conclusively established that the conditions precedent for imposition of penalty upon the company under Section 114(i) of the Act and under Section 114(i) and Section 114AA of the Act upon the Appellant No.(2) has not been said to have been satisfied.

3.1 It is further submitted that in the said order there is no finding against the Company by the Commissioner, except that the Company was liable to penalty under Section 114(i) of the Act. All findings are confined in respect of the Director of the Company, the Appellant No. (2), and that too, in his individual capacity. Reference to the "exporter" in the "Discussions and Findings" part of the said order is also confined to Sri Rakesh Doshi, the Appellant No.(2) and not to the Company. This would be ex-facie evident from the impugned order. In the absence of any finding against the Company that it had done or omitted to do any act in relation to the export goods involved, which action or omission rendered the said goods liable to confiscation under Section 113 of the Act or had abetted the doing or omission to do such an act, no penalty can be imposed upon the Company under Section 114 of the Act, including clause (i) thereof. Thus, the condition precedent for imposition of penalty upon the Company under Section 114(i) of the Act has not been or cannot be said to have been satisfied

in the instant case. The penalty of Rs.25 lakhs imposed upon the Company under Section 114(i) of the Act is, therefore, contrary to law, untenable and unsustainable.

3.2 Further, he submits that no basis has been disclosed in the said order as to how and on what basis the Company has been held to be liable to penalty under Section 114(i) of the Act. No material has also been disclosed to justify holding the Company liable to penalty. Significantly, it has been specifically stated in the show cause notice and set out in the said order also that on search of the Company's premises by the DRI authorities, no incriminating goods or documents were found or retrieved. The penalty imposed upon the Company by the said order is, therefore, by a non-speaking and non-reasoned order rendering the same illegal, invalid and bad in law.

3.3 He further submits that in such undisputed circumstances and facts on record, no reasonable person can come to the conclusion that the appellants had committed any act of commission or omission rendering themselves liable to penal action under Section 114(i) and/or Section 114AA of the Act. The Commissioner has thus erred in holding that the Company was liable to penal action under Section 114(i) of the Act and that the Appellant No.(2) was liable to penalty under Section 114(i) and 114AA of the Act.

3.4 Further, he submits that Section 114(i) of the Act makes a person liable to penalty for attempting to export goods improperly, by doing or omitting or omits to do any act in relation to the said goods, which act or omission would render the said goods liable to confiscation under section 113 of the Act or abets the doing or omission of said Act(s). In the instant case on the finding of the Commissioner in the said order itself and/or the allegations in the show cause notice and from the materials on record also, there is no evidence disclosed/available of any act of omission or commission on

the part of the Company or the Appellant No.(2) or of their abetting the doing or omission to do such acts, which has rendered the said goods, attempted to be exported by them, liable to confiscation under Section 113 of the Act.

3.5 It is further submitted that there is no material evidence available on record that the Appellant No.(2) was aware of the fact of red sanders wood logs being loaded in the said container, upon replacing a part of the export goods, i.e., the binding wires and attempt was made to export the same illegally and that the Appellant No.(2) came to know about it only on May 8, 2017 when he was so informed about it by the concerned DRI officer. In such circumstances, there cannot be any allegation of any act of omission or commission on the part of the appellants in relation to the said red sanders wood logs, which has rendered the said goods liable to confiscation under Section 113 of the Act. In fact, it is not so alleged in the show cause notice nor is there a finding to this effect in the said order. It also cannot also be said or held that the appellant by its any act of omission or commission had abetted in the act of omission or commission by some other persons which has rendered the red sanders logs liable to confiscation under Section 113 of the Act.

3.6 Further, he submits that in the said facts and circumstances of the instant case on record, including as found by the Commissioner in the said order, as per the settled principles of law as to what amounts to abetment, there has not been and cannot be said to have been any abetment on the part of the appellant as envisaged under Section 114 of the Act. "Irresponsible conduct and acts" as purportedly found by the Commissioner, assuming though denying to be correct, on the part of the appellant no. 2 does not satisfy the said settled principles of law for being an act of abetment, for which a person is liable to penal

action, inter alia, under the Act. In support of his contention, he relies on the following decisions:

(i) M/s. Katras Ceramics & Refractories Pvt. Ltd. & Ors. Vs. Commissioner of Customs (Port), Kolkata, 2024 (7) TMI -323;

(ii) Commissioner of Customs (Port) Vs. M/s. Ashoke Enamel & Glass Work Pvt. Ltd. 2021 (11) TMI – 963 (Calcutta High Court)

(iii) Sanyo Ceramics Vs. C.C. Mundra and C.C. Mundra Vs. Sanyo Ceramics 2024 (2) TMI 515 (Cestat Ahmedabad)

(iv) Fast Cargo Movers Vs. Commissioner of Customs, 2018 (362) ELT 184(T);

(v) Freightwings & Travels Ltd. Vs. Commissioner of Customs, 2017 (358) ELT 669(T);

(vi) Maheshwari Rocks (I) Pvt. Ltd. Vs. Commissioner of Customs, 2010 (262) ELT 574(T);

(vii) Md. Abdul Majed Sardar Vs. Commissioner of Customs (Prev.), 2017 (353) ELT 238(T-Kol);

(viii) Kiran S. Dixit Vs. Commissioner of Customs, 2014 (301) ELT 337(T);

3.7 He further submits that the purported reason/ground on which the Commissioner has imposed penalties upon the Appellant No.(2) in the instant case is that he allegedly "indirectly enabled" the "smuggling cartel" to attempt smuggling of red sanders wood, a restricted/prohibited item for export, obtained IEC in the name of the company as per advice of Bipul Saha alias Sandip Ghosh and that he was not fit to act as exporter/importer because of his callous and irresponsible behaviour as exporter in as much as he allowed fraudsters to take control over export consignment for, inter alia, smuggling and that since he was not in control of the exports in the company's name "in any manner" of the subject consignment, it enabled the smuggling syndicate to take over the company's IEC and

the export goods for smuggling purposes. On the ground that such alleged irresponsible conduct and acts of the appellant had rendered the subject goods liable to confiscation, the Commissioner came to the conclusion that the Appellant No.(2) was liable to penal action under Section 114(i) of the Act. It is submitted that these purported findings are patently erroneous and untenable, being based on assumptions and presumptions unsupported by material on record and/or based on incorrect fact, evident from record. For example, the finding that the IEC of the company was obtained by the appellant as per advice of Bipul Saha alias Sandip Ghosh is ex-facie incorrect. This would be evident from the IEC itself. It would be seen that the IEC was issued on September 29, 1999, which is 17½ years prior to the appellant interacting with Bipul Saha, as above stated, for the first time.

3.8 It is further submitted that in imposing penalty upon the Appellant No.(2) under Section 114AA of the Act, the Commissioner has alleged that the appellant along with Sandip Ghosh alias Bipul Saha made use of fake purchase order for attempting export of red sanders, making them liable to penalty under the said provision. The said purported finding of the Commissioner, in so far as the Appellant No.(2) is concerned, is not only erroneous, unsupported by materials on record, but also self contradictory. There is no material on record disclosed that the appellant at any point of time of being made aware of or being aware of the fact that the purchase order from the Chinese company provided to the company by the said Sandip Ghosh alias Bipul Saha was a fake purchase order. In fact, there is no such allegation in the show cause notice also. The materials on record evidences that there arose, at the time of receiving the purchase order or thereafter, no cause or reason or basis for the Appellant No.(2) or the company doubting the veracity of the purchase order or the

foreign party placing the purchase order. It is clearly recorded in the said order by the Commissioner that the Appellant No.(2)'s role was limited to arranging the declared export goods, i.e., binding wires and that the appellants had not negotiated/entered into agreement with the foreign buyer. In such circumstances the finding that the Appellant No.(2) used fake purchase order for attempted export of red sanders is patently erroneous and untenable. Consequently, he submits that the imposition of penalty upon the Appellant No.(2) under Section 114AA of the Act is patently erroneous and untenable.

3.9. Further, he submits that Section 114AA of the act provides that 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 the Act, shall be liable to a penalty thereunder. Thus, the primary condition precedent under this provision is that the acts of omission referred to therein has to be committed "knowingly or intentionally" by the person concerned. In the light of the facts recorded by the Commissioner in the said order itself it is conclusively established that this primary condition precedent for invocation of Section 114AA of the Act has not been and cannot be said to have been satisfied in respect of the Appellant No.(2). The imposition of penalty of Rs.25 lakhs upon the appellant by the said order under Section 114AA of the Act is therefore without the condition precedent therefor being satisfied and is illegal, invalid, untenable and unsustainable.

3.10. He, further, submits that without prejudice to the aforesaid and fully relying on the same, and in any event, the penalties imposed upon the appellants under Section 114(i) and/or Section 114AA of the Act, in the facts and circumstances of the instant case, are untenable and unsustainable and the same are liable to be set aside.

3.11. It is further submitted that the ld.Commissioner has erred in purporting to confiscate 7260 kgs of the said goods under Section 119 of the Act and/or imposing redemption for release of the said goods.

3.12. He further submits that in the facts and materials disclosed in the show cause notice and the said order itself, the primary condition precedent, i.e., user of the said goods for "concealing" the smuggled goods, as required under Section 119 of the Act, has not been and cannot be said to have been satisfied. There has been no concealment of red sanders wood logs by or using the coils of wire. This would be ex-facie evident from, inter alia, paragraphs 2 and 3 of the show cause notice itself (set out in the said order). It would be seen therefrom that the coils of wire, which were a part of the entire consignment of the said goods to be exported and which were cleared from the appellant's factory under seal of the jurisdictional Central Excise authority, were lying at the bottom of the container over which torn gunny bags were placed and on the top of which read sanders wood logs, which were attempted to be exported, were kept. Even, according to the show cause notice and the said order, the said red sanders wood logs replaced a substantial part of the said goods, which were removed to make place in the container for the red sanders wood logs. This is not and cannot be said to be "concealing" of smuggled goods, i.e., red sanders wood logs with the said goods being coils of wire, as per settled principles of law. In fact, from the show cause notice it would be seen that it is acknowledged that there was in effect no attempt to hide red sanders wood logs in the container. This is apparent from the fact that according to the show cause notice immediately upon opening of the container the red sanders wood logs were first found, whereas only upon removal thereof and the torn gunny bags from the container, the coils of wire rod were found lying

at the bottom therein, as removed from the said factory of the appellant under central excise seals. Section 119 of the Act providing for goods used for concealing smuggled goods being liable to confiscation, therefore, cannot have any application whatsoever to the instant case, the primary condition precedent laid down therein not being satisfied. In the premises, confiscation of the said goods by the said order is contrary to law, untenable and unsustainable. In support of his contention, he relies on the following decisions:

(i) Mazda Chemicals Vs. Commissioner of Customs (Prev.), 1996 (88) ELT 767(T);

(ii) Hindustan Wires Limited Vs. Commissioner of Customs (Prev.), 1999 (113) ELT 529(T-Kol);

(iii) Dooars Roadway Corpn. Vs. Commissioner of Customs, 2007 (208) ELT 290(T);

3.13. Further, he submits that the said goods not being liable to confiscation under Section 119 of the Act, the question of the same being allowed to be released upon payment of redemption fine of Rs.3,15,000/- under Section 125 of the Act, also cannot and does not arise, the said provision being consequential to legal confiscation of the said goods in terms of Section 119 of the Act. The redemption fine of Rs.3,15,000/- imposed by the said order is, thus, also illegal, invalid and bad.

3.14. Further, it is submitted that in any event and without prejudice to the aforesaid, in terms of the Proviso to Section 125(1) of the Act, except in the case of goods covered by the Proviso to Section 115(2) of the Act, redemption fine under Section 125 of the Act, cannot exceed the market price of the goods confiscated. Undisputedly the Proviso to Section 115(2) of the Act is inapplicable to the instant case. No basis or reason has been disclosed in the said order as to how the

Commissioner has come therefore to the conclusion that the said goods are liable to redemption on payment of fine equal to the value of the said goods. It is settled law that the redemption fine of Rs.3,15,000/- cannot be arbitrary imposed by the adjudicating authority. He, therefore, prays that the Appeals (C/78682,78683/2018) be allowed with consequential relief by setting aside the impugned order.

4. In respect of the Appeal No.C/78715/2018, the appellant submits that he was working as Manager of M/s Mallick Clearing Agency. a Customs Broker when he was introduced with one Shri Raj Kumar Mandal by one of his acquaintance Shri Pradip Deb for the purpose of job of CB in the export consignment of M/s. Panel Pin Manufacturing Company Ltd. Appellant duly accepted such job and received the export documents along with authorisation of the exporter through said Raj Kumar Mondal. The Container No. YMLU3576647 sealed with Central Excise Seal reached Kolkata Port from exporter when the appellant on the basis of export documents filed Shipping Bill No. 5820910 dated 03.05.2017. Such consignment was intercepted by DRI, Kolkata on 06.05.2017 and on examination of container, after breaking the seal, Red Sanders weighing 8940 kgs. along with declared H.C. Binding Wire weighing 7260 kgs. were recovered and seized.

4.1. Shri Arijit Chakraborty, ld.Advocate for the said appellant, submits that the finding against the said appellant in the impugned Order-in-Original, is not independent in nature and it would be evident that the appellant has been made liable for penalty with other persons upon finding against some other noticee viz. Sushanta Pan, which is absolutely erroneous in law.

4.2. Further, it is submitted that the role of the present appellant was limited to the extent of CB since the appellant was working as an employee of M/s. Mallick Clearing Agency. The CB was never made a party in the proceeding and as such, it is admitted position that there was no latch as CB in the present case. Adjudicating Authority has presumed involvement of the appellant, amongst other, without any evidence or independent finding, which is seriously bad in law. He further submits that there is not a single evidence on-record to suggest even that the appellant had any prior knowledge or involvement with respect to seized Red Sanders in the present case and as such, imposition of penalty upon the present appellant only for acting as CB in the said export consignment is seriously bad in law. Appellant relies upon the Judgement dated 21.07.2026 passed in CUSTA 11 of 2017 [B.R.B Roy-Vs- CC (Prev.), Kolkata & Anr.) wherein it has been held by the Hon'ble High Court, Calcutta that in absence of any material suggesting involvement of the appellant, imposition of penalty upon the appellant is bad in law.

4.3 Further, he submits that there is no evidence that the appellant had any prior knowledge that the container for export was stuffed with Red Sanders. Further, he submits that it is not the case of the Department that the Central Excise Seal was forged or fake. He submits that there is no investigation regarding delayed arrival of the vehicle carrying container at Kolkata Port from the place of exporter, as such, allegation of prior knowledge or involvement in any smuggling activity against the appellant cannot stand in law.

4.4. Finally, he prays that the penalty imposed on the appellant be set aside and the appeal be allowed with consequential relief to the said appellant.

5. In respect of Appeal No.C/78716/2018, the ld.Counsel, Shri Arijit Chakraborty submits that the finding against the appellant in the impugned Order-in-Original is not independent in nature and it would be evident that the appellant has been made liable for penalty with other persons upon finding against some other noticee viz. Sushanta Pan, which is absolutely erroneous in law. He further submits that from the Show-cause notice as well as Order-in-Original, it would be evident that both co-noticee/accused viz. Shri Raj Kumar Mondal and Shri Amar Chandra Roy had respectively admitted during investigation that the present appellant had only introduced them to each other for the purpose of job of clearance of export consignment of M/s Panel Pin Manufacturing Company Ltd. and apart from the same there is no other role of the appellant in the present case.

5.1 Further, it is his submission that there is no evidence that the appellant had any prior knowledge that the container for export was stuffed with Red Sanders. Further, he submits that it is not the case of the Department that the Central Excise Seal was forged or fake. Further, it is further contented that there is no investigation regarding delayed arrival of the vehicle carrying container to report at Kolkata Port, as such, allegation of prior knowledge or involvement in any smuggling activity cannot stand against the appellant. He further submits that the appellant not being part of export consignment under seizure in any manner whatsoever, cannot be saddled with any penal consequence upon any presumption or suspicion Moreover, the

appellant has no antecedent to the alleged offence. He, therefore, prays that the penalty imposed on him be set aside and the appeal be allowed with consequential relief to the said appellant.

6. The ld. A.R. for the Revenue, reiterated the findings in the impugned order. The ld. A.R. submits that the Red sanders, a prohibited item has been seized from the container containing the goods exported by the Appellant no.1. The other Appellants herein have abetted the smuggling act. Accordingly, he justified the confiscation and penalties imposed in the impugned order.

7. Heard both sides and considered the submissions.

8. From the facts on record, we find that the Appellant company exported a consignment of 16 MT of steel wire manufactured by it to Chinalight Tri-Union International Co. Ltd., Beijing, China, in terms of an order placed by the said Chinese company. The said order was received by the Appellant company through an email sent by Bipul Saha. We find that the said consignment was loaded in an empty container, brought by a representative of Sri Bipul Saha at the factory premises, in the presence of the jurisdictional Central Excise Officers and under their supervision. After full inspection and loading of the goods in the presence of the officers, the concerned Central Excise Officers sealed the container. Upon completion of documentation the said loaded container was permitted to leave the said factory premises by the said jurisdictional Central Excise Officer.

8.1 From the facts narrated above, we find that the goods exported by the Appellant were loaded in the presence of the officers and the container was also sealed in the presence of officers. The said loaded container containing the said goods left the said factory

premises on May 07, 2017 for Khidirpur port. On 08.05.2017, the officers of DRI intercepted the container and on examination it was found to contain 218 nos. of red sanders wooden logs. Out of the 16MT of steel wire loaded in the container, only 7 MT of steel wire was available in the vehicle and the remaining quantity of steel wire was found missing. Thus, it is evident that the mischief of replacing the steel wire by Red sanders wooden logs has happened during the course of transport of the goods from the Appellant's factory to the port. The container sealed by the officers at the factory premises was broke open in between with the connivance of the driver of the vehicle and part of the quantity of steel wire available in the vehicle was replaced by red sanders wooden logs. We find that there is no evidence brought on record to show that the Appellant company or Shri Rakesh Doshi, Director of the Appellant company was involved in the alleged offence in any manner. The investigation has not established the connivance of the Appellant company or it's Director in replacing the goods loaded in the factory while transporting the same to port. Accordingly, we hold that the Appellant company or it's Director Shri Rakesh Doshi cannot be held responsible for the alleged act of attempted export of red sanders in the container loaded with the goods manufactured by the Appellant company.

8.2 In this regard, we have perused the findings of the Ld. Adjudicating authority regarding the role of the Appellant company and it's Director in the alleged offence. For ready reference, the said para 56.2 in the impugned order is reproduced below:

> *"56.2 I find that Shri Rakesh Doshi, Director of M/s. Panel Pin Manufacturing Company Pvt. Ltd. had negotiated with the said*

Shri Sandip Ghosh for the export sales and delegated the responsibilities to that person for logistics arrangements like booking of containers, transporters, appointment of CB. freight forwarder, etc. It is also evident that Shri Rakesh Doshi had negotiated with Shri Sandip Ghosh, even without properly knowing him and without verifying his credentials, identity and antecedents. In fact he admittedly obtained IEC as per advice of this Sandip Ghosh. He did not act as a bonafide exporter but relied on this person named Shri Sandip Ghosh alias Bipul Saha alias Baponfor procurement of export orders and other export arrangements only for the sake of commission with his role limited to arranging for the declared export goods i.e. binding wires. International trade by exporters and importers is not done in such a casual manner through dubious middlemen and agents and without negotiation/agreement with foreign buyer. International trade is serious activity with clear rules to be followed by all concerned involved and with well-defined responsibilities. The global supply chain of goods has to be secure and reliable to prevent use of international trade protocols by smugglers, criminals and terrorists. I find that the exporter indirectly enabled the said smuggling cartel to attempt the smuggling of Red Sanders, a restricted/prohibited item for export. The exporter is responsible for the export of the declared goods. He cannot claim later that the export was being carried out in his name by others. Exporters like Shri Rakesh Doshi allow fraudsters and even criminals/ terrorists to take control over exports/imports for smuggling and other offences which may compromise national security. He is clearly not fit to act as exporter-importer because of his callous and irresponsible behavior as exporter. He was not in control of the exports in his company's name in any manner which enabled the smuggling syndicate to take over his IEC and exports for smuggling purposes. The exporter wrote a letter dated 3.6.2017 to the Officer-in-Charge, West Port Police Station, Khidjrpur, Kolkata requesting for FIR/complaint against Sri Bipul Saha and others for committing fraud, cheating, misappropriation, breach of trust and conspiracy. First Information Report (17313) is said to have been recorded by Inspector of Police. However for his irresponsible conduct and acts the subject goods seized are

liable for confiscation, and he himself is liable for penal action under Section 114(i) of the Customs Act, 1962."

8.3 From the findings reproduced above, we find that the bona fide of both the Company and it's Director has been established from the findings contained in the order itself. We find that the ld.Commissioner has himself recorded the fact that:

(i) The container was loaded with the export goods in front of Central Excise officers at the said factory and duly sealed by them, which seal were found intact with date at the dock, when the container was intercepted

(ii) The "perpetrators at some point of time replaced" a part of the said goods (the binding wires) with red sanders wood logs and "brought the consignment to N.S. Dock, Kolkata port for export".

(iii) Bipul Saha alias Sandip Ghosh and the other noticees had engaged persons to take the declared export goods from the manufacturer's premises.

(iv) The said Bipul Saha had procured the export order by giving false assurance of business to the willing exporter, the appellant company.

(v) The container containing the genuine export goods of the said IEC holder (the appellant company) was booked by the said Bipul Saha alias Sandip Ghosh.

(vi) The Appellant No.(2) had obtained the IEC in favour of the Company as per the advice of said Sandip Ghosh and had negotiated with him without properly knowing him and without verifying his credentials and further had relied on this person.

(vii) Because the said Appellant No.(2) was not in control of the exports in the Company's name, the "smuggling syndicate" took over

the company's IEC and the export products and tried to use the same for smuggling purposes.

(viii) The appellants had filed an FIR/complaint on June 3, 2017 before the Officer-in-Charge, West Port Police Station, Khidirpur, Kolkata alleging fraud, cheating, misappropriation, breach of trust and conspiracy against Bipul Saha alias Sandip Ghosh and his companions, including the transporter and the driver of the vehicle.

8.4 From the facts and circumstances on record, we find that the ld. Adjudicating authority has accepted the fact that the Director of the Appellant company Shri Rakesh Doshi had dealt with Shri Sandip Ghosh alias Bipul Saha alias Baponfor for procurement of export orders and other export arrangements, without properly knowing him. We find that the Appellant company, as a bonafide exporter believed the person Shri Sandip Ghosh, who has cheated him. Since the connivance or involvement of the Appellant company or it's Director are not established in the alleged offence, we hold that the penalty imposed on the Appellant company or it's Director Shri. Rajesh Doshi are legally not sustainable and hence the same are set aside.

8.5 We also observe that the goods namely steel wire manufactured by the Appellant company are exported under proper supervision in the presence of the Central Excise Officer and hence we hold that the goods are not liable for confiscation. Accordingly, we hold that the redemption fine imposed in lieu of confiscation is not sustainable and hence we set aside the same.

9. Regarding the penalties imposed on the other two Appellants namely Shri Pradip Deb and Shri. Amar Chandra Roy, we find that they acted as middlemen in the export of goods. The role played by them

as recorded in the impugned order is reproduced below for ready reference:

> *"56.5 I find that Shri Susanta Pan, Shri Raj Kumar Mondal, Shri Pradip Deb and Shri Amar Chandra Roy have acted as middlemen in collusion with Shri Sandip Ghosh alias Bipul Saha alias Bapon, to facilitate the attempted smuggling of Red Sanders. They were found to be in regular contact with Shri Sandip Ghosh alias Bipul Sah Saha alias Bapon but didn't revealhis whereabouts during the enquiry. Shri Susanta Pan went to the house of Sandip Ghosh alias Bipul Saha alias Bapon on various occasions and was known to him for the last few years but did not reveal this during enquiry initially. Shri Susanta Pan even did not disclose the actual name of Bipul Saha to DRI during investigation. He disclosed the same only after arrest of Shri Sandip Ghosh alias Bipul Saha alias Bapon. It is evident that all of them acted in connivance with Shri Sandip Ghosh alias Bipul Saha alias Bapon for attempted smuggling of Red Sanders, their delivery and other related logistic supports. Shri Susanta Pan was also found to be actively involved in another Red Sanders case earlier."*

10. From the role played by them reproduced above, it clearly reveals that the Appellants were middlemen acted in connection with the export of the goods steel wire. There is no evidence available on record to show that they were knowingly involved in the attempted smuggling the Red Sanders and were part of the smuggling syndicate. There is no evidence on record to show that they were the part of the smuggling syndicate and facilitated the attempted smuggling of red sanders. Accordingly, we hold that the penalties imposed on them under Section 114 (i) of the Customs Act, 1962 are not sustainable and hence we set aside the same.

11. In view of the above findings, we pass the following order:

(i) The penalty imposed on the Appellant company and it's Director Shri. Rajesh Doshi are legally not sustainable and hence the same are set aside.

(ii) The redemption fine imposed in lieu of confiscation is not sustainable and hence the same is set aside.

(iii)The penalties imposed on the Appellants Shri Pradip Deb and Shri.Amar Chandra Roy under Section 114 (i) of the Customs Act, 1962 are not sustainable and hence the same are set aside.

12. In view of the above detailed observations, the appeals filed by the Appellants are disposed of on the above terms.

(Pronounced in the open Court on **30.10.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
mm **Member (Technical)**