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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 78320 of 2018

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/49/2018 dated 13.06.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Manoj Arjun Gore **: Appellant**
Flat No. 4, Javid Manzil, K.K. Ganguly Marg,
Juhutara Road, Santacruz West,
Mumbai – 400 049 (Maharashtra)

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

APPEARANCE:

Shri Abhijit Biswas, Advocate, for the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 76525 / 2026

DATE OF HEARING / DECISION: 15.10.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order to the extent of imposition of penalty of Rs.25,00,000/- upon him under Section 112(a)(ii) of the Customs Act, 1962 on the ground of his alleged involvement in the evasion of Anti-Dumping Duty in respect of imports of PVC Flex Banner Sheets. The issue arising in the present appeal is thus confined to the sustainability of the aforesaid penalty under the Customs Act, 1962.

2. The facts of the case are that an investigation was initiated by the Directorate of Revenue Intelligence (DRI), Kolkata Zonal Unit, on the basis of intelligence, pursuant to which search operations were conducted at the premises of various importers. In the course of the investigation, it was inferred by the Department that five importing firms, namely, (i) M/s. Atul Commodities Pvt. Ltd., (ii) M/s. Atul Automation Pvt. Ltd., (iii) M/s. Parag Enterprises, (iv) M/s. Arihant Marketing and (v) G.S. Infotech, had imported PVC Flex Banner Sheets from two overseas suppliers, namely, M/s. Topaz Plastic Industries (M) SDN BHD, Malaysia, and M/s. Yuli Plastic (Thailand) Co. Ltd., Thailand. The imports in question comprised a total of 23 Bills of Entry, of which 12 Bills of Entry pertained to the Malaysian entity viz. M/s. Topaz Plastic Industries (M) SDN BHD, Malaysia and 11 Bills of Entry pertained to the Thai entity viz. M/s. Yuli Plastic (Thailand) Co. Ltd.. The consignments had been imported through various Indian ports, including Kolkata, Nhava Sheva, Chennai, Tughlakabad and Visakhapatnam. The allegations concerning the Malaysian entity, M/s. Topaz Plastic Industries (M) SDN BHD, Malaysia, constitute the relevant factual strand for the purposes of the present appeal, the appellant being alleged to have acted as its International Marketing Director.

3. As regards the 12 Bills of Entry in question, associated with the Malaysian entity, the investigation, on the basis of shipping particulars, proforma invoices, commercial invoices, remittance application forms, private accounting sheets, data retrieved from a hard disk and other documents allegedly recovered or collected during the investigation, it appeared to the Revenue that the

goods had been dispatched by M/s. Zhejiang Tianchang Plastic Fabric Co. from Shanghai Port, China, to M/s. Topaz Plastic Industries (M) SDN BHD at Port Klang, Malaysia, and had thereafter been dispatched from Malaysia to various ports in India. The Department's case was that the intervening movement through Malaysia did not represent genuine Malaysian origin of the goods, but was part of an arrangement under which goods manufactured in or originating from China were re-routed through Malaysia and presented to the Indian Customs authorities as Malaysian-origin goods. The investigation further alleged that the requisite Bills of Lading, invoices, packing lists and other commercial documents, together with certificates of origin under the ASEAN–India Free Trade Area (AIFTA) arrangement, had been arranged in the name of the Malaysian entity and in accordance with the Importer Exporter Codes (IECs) furnished or specified by the Indian importers. According to the Revenue, the certificates of origin had been obtained fraudulently from the Malaysian Government authorities and were used to represent the consignments as originating in Malaysia, thereby enabling the Indian importers to claim the benefit of the applicable preferential customs treatment. It was also alleged that the Indian importers had mis-declared the value of the imported goods in the documents submitted before the Indian Customs authorities. During the course of such investigation, statements of various persons including the directors/proprietors/employees of the above said firms were also recorded.

4. Parallelly, the DRI, Chennai Zonal Unit, conducted investigations involving various importers located at Chennai, Madurai, Vijayawada and

Hyderabad, during which documents, laptops, hard disks and other materials were recovered. In the course of the said investigation, inter alia, an allegation was made that the appellant, Shri Manoj Arjun Gore, acting along with one Goh of Malaysia, was running the firm, inter alia, in the name of M/s. Topaz Plastic Industries (M) SDN BHD, Malaysia, and certain other firms; that they had facilitated the of PVC Flex Banner Sheets to various Indian importers which were originating in China but re-routed through Malaysia. The alleged object of the arrangement was to enable the Indian importers to avoid payment of the applicable Anti-Dumping Duty (ADD) by representing the goods as originating in Malaysia rather than China. The appellant was accordingly alleged to have played a role in the overseas arrangements through which the consignments were supplied to the Indian importers and the accompanying documentation was prepared.

4.1. In connection with the aforesaid allegations, the statement of the appellant, Shri Manoj Arjun Gore, was recorded during the course of the said investigation wherein, the appellant is alleged to have stated, inter alia, that he knew several of the Indian importers concerned, having previously been engaged in the PVC Flex business, and that, after the introduction of Anti-Dumping Duty, such importers began procuring consignments from Chinese suppliers in connivance with the Indian importers; that, initially, in most cases, the containers carrying the goods were destuffed and the goods were restuffed into different containers before being dispatched to India; in other cases, however, the containers containing PVC Flex Banner Sheets received in Malaysia were subsequently transhipped from there to India without

changing the containers, the latter arrangement allegedly having been adopted because the cost of transporting the containers from the port to the factory and the labour charges involved in destuffing and restuffing had become excessive. The appellant was further alleged to have stated that a separate set of invoices, packing lists, Bills of Lading and other documents was prepared in the name of the Malaysian firms, in accordance with the IECs provided by the Indian importers, and that the parties involved in such arrangements received a commission of approximately Rs.1.5 lakh per container. The statement attributed to the appellant also concerned the procurement of certificates of origin issued by the Malaysian authorities; however, the allegation that such certificates had been obtained unscrupulously or fraudulently was the Department's inference from the overall arrangement.

4.2. From the documents seized and the statement recorded, it also appeared to the Revenue that the said consignments were initially contracted on a Free on Board (FOB) basis whereas the Malaysian firms subsequently issued invoices showing the consignments on a Cost, Insurance and Freight (CIF) basis. The Revenue took the view that the differential value attributable to ocean freight, insurance and other incidental charges was also required to be taken into account for the purpose of determining the assessable value and the corresponding customs duty liability.

5. On the basis of the aforesaid investigation, a Show Cause Notice dated 27.12.2016 was issued by the DRI, Kolkata, under Sections 28 and 124 of the Customs Act, 1962, initiating proceedings against the

five importing firms, namely, M/s. Atul Commodities Pvt. Ltd., M/s. Atul Automation Pvt. Ltd., M/s. Parag Enterprises, M/s. Arihant Marketing and M/s. G.S. Infotech, as well as their directors / proprietors / employees, in addition to the appellant, Shri Manoj Arjun Gore, for the role attributed to him in the alleged offence. The Notice alleged that the PVC Flex Banner Sheets imported under the 23 Bills of Entry had been re-routed through Malaysia and Thailand, as the case may be, despite being of Chinese origin, and that the benefit of Notification No. 46/2011-Customs dated 01.06.2011, read with Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009, had been wrongfully availed with a view to evade the applicable Anti-Dumping Duty (ADD) and that the value of the imported goods had also been mis-declared. On the allegation that the appellant had acted as the International Marketing Director of M/s. Topaz Plastic Industries (M) SDN BHD, Malaysia and had aided and abetted the re-routing of the consignments covered by the 12 Bills of Entry through Malaysia, penalty under Section 112(a) of the Customs Act, 1962 was proposed against him.

5.1. Upon adjudication, the Ld. Commissioner of Customs (Port), Custom House, Kolkata, passed Order-in-Original No. KOL/CUS/COMMISSIONER/ PORT/49/2018 dated 13.06.2018 wherein apart from, inter alia, rejecting the declared country of origin, confirming the demands of Anti-Dumping Duty and denying the benefit of Notification No. 46/2011-Customs dated 01.06.2011, read with Notification No. 189/2009-Cus. (N.T.) dated 31.12.2009 to the said importers, the ld. adjudicating authority imposed a penalty of Rs.25,00,000/- upon the appellant under Section 112(a)(ii) of the Customs Act, 1962, on the

ground of his alleged involvement in the transactions forming the subject matter of the proceedings.

5.2. Aggrieved by the imposition of the aforesaid penalty, the appellant is before is.

6. The Ld. Counsel appearing on behalf of the appellant contended that the penalty imposed on the appellant is unsustainable on the following grounds: -

(i) That for the same issue, in identical set of facts, the Chennai bench of the Tribunal has already decided the issue, in favour of the appellant, therefore the issue is no more res integra. In this respect reference can be made the following decisions of the Tribunal

- *2026 (4) TMI 317 – CESTAT Chennai - Manoj Arjun Gore Versus The Commissioner of Customs (II), Chennai*
- *2025 (11) TMI 135 - CESTAT Chennai - Shri Manoj Arjun Gore Versus Commissioner of Customs;*
- *2025 (2) TMI 751 – CESTAT Kolkata - M/s Sibco Overseas Private Limited Versus Commissioner of Customs (Port)*

(ii) That the said goods imported by the importers were of Malaysian origin and duly certified as such by the prescribed Malaysian authority in accordance with the provisions of the ASEAN Rules and/or the Customs Tariff (Determination of Origin of Goods Under the Preferential Trade Agreement Between the Governments of the Republic of India and Malaysia) Rules, 2011 (hereinafter referred to as "India Malaysia Rules"). There is no evidence disclosed, as none existed, in support of the false allegation/finding that the said Certificates of Origin were not

signed by the authorized person of the Malaysian authority or that such signatures were forged or that there was any discrepancy in the contents of the said certificates. The purported finding in the said order that the country-of-origin certificates were got issued by misrepresentation and fraud is also a conclusion based on fertile imagination of the Commissioner. Such a purported finding does not even find a place as an allegation in the show cause notice.

(iii) Contrary to the misconceived, erroneous and perverse findings of the Commissioner in the said order, the documents and materials on record conclusively evidences that the finding in the said order of the said goods being imported by the importers from China and not from Malaysia and that they were of Chinese origin and not of Malaysian origin is based on patently wrong assumption of facts and evidence on record, are completely misconceived and based on ex-facie violation of the ASEAN Rules and/or India Malaysia Rules. The evidence on record conclusively evidences that the said goods imported by the importers are of Malaysian origin and the importers has correctly, legally and validly imported the same, declared them and their values correctly in the respective Bills of Entry and had legally and validly availed exemptions under the said notification to which the said goods are duly entitled to having complied with the requirements thereof.

(iv) The wrongful and illegal rejection of the certificates of origin issued in the prescribed

manner by the prescribed authority of Malaysia in accordance with the provisions of Notification No. 189/2009-Cus (NT) dated December 31, 2009, as amended, being the "Customs Tariff Determination of Origin of Goods under the Preferential Agreement Between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India Rules, 2009" is completely contrary to law and also violative of the provisions of the ASEAN Rules. There is no discretion or authority or power with the DRI or Customs authorities to reject such Certificate of Origin issued by the originating country covered by the ASEAN Rules by conducting local investigation to deny exemption thereunder to an importer. The manner in which such Certificate of Origin can be verified, if there is doubt thereto, is provided in detail in the said ASEAN Rules. From the show cause notice and the said order, it would be seen that no attempt has been made to act in terms of the said mandatory provisions of the ASEAN Rules. There is also no finding that the signature(s) contained in the respective Certificates of Origin were either forged or not executed by the prescribed authority therefor under the ASEAN Rules. In the absence thereof, the said Certificates of Origin cannot be disregarded nor ignored and exemption under the ASEAN Rules and the corresponding exemption Notification No. 46/2011-Cus dated June 1, 2011 (hereinafter referred to as the "said notification") cannot be denied in respect of the said goods imported by the importers from

Malaysia. As a matter of fact, contrary to the misconceived inferences sought to be drawn in the said order, based on fabricated evidences and/or assumptions and presumptions, it is an undisputed fact that the Certificates of Origin issued in the prescribed form by the prescribed authority of Malaysia as per the provisions of the ASEAN Rules were duly verified by the specified authority. In this respect reference can be made the following decisions of this Tribunal.

- *2025 (TMI) 589 – CESTAT Chennai - M/s. Tech Zone Global Trading Company Versus Commissioner of Customs (Import) Chennai-II Commissionerate*
- *2024 (5) TMI 476 – CESTAT Ahmedabad - Jai Goverdhan Enterprise Versus Commissioner of Customs – Mundra*
- *2023 (9) TMI 86 – CESTAT Ahmedabad - Alfakrina Exports Versus C.C. Mundra*
- *2026 (7) TMI 928 - CESTAT New Delhi - M/s. P.C. Jeweller Limited Versus Principal Commissioner of Customs ACC (Import), New Delhi*

(v) In coming to the purported conclusions of alleged Chinese origin of the said goods imported by the importers from the Malaysian company instead of the same being of Malaysian origin as claimed by the importers, the Commissioner has purported to rely upon the purported statement of the appellant, also a show cause noticee in the instant case, allegedly recorded by DRI, Chennai in investigation of some other consignments of similar goods imported into India by some other parties, on July 25, 2013. According to the Commissioner,

the appellant had admitted that the said goods which were being supplied to the Indian importer by Topaz was actually of Chinese origin and not of Malaysian origin. According to the Commissioner, the appellant had also admitted that he had arranged for the country-of-origin certificates produced by the importers for these Chinese goods through the owner of Topaz and that he had done business with Shri Parag Borhani of alleged "Atul Group". As per the Commissioner the modus operandi in detail described by the appellant in his statement corroborated DRI's findings. While coming to such conclusion however the Commissioner has deliberately and with a mala fide and ulterior motive and/or for collateral purposes omitted, in spite of his attention being specifically drawn thereto, the relevant fact that purported statement dated July 25, 2013 was retracted by the appellant, which is evident from the letter dated October 21, 2013 of appellant to the Additional Director General, DRI, Chennai, a document on record. It has also been deliberately suppressed that upon receipt of the said retracted statement the appellant was again summoned and forced to give an involuntary statement that his retraction statement was false and incorrect under threat of his bail granted by the Court being cancelled and bail condition not being relaxed unless a statement was given as dictated by the DRI authorities. The said letter dated October 21, 2013 further evidenced that this purported statement recorded on October 21, 2013 from the appellant was also subsequently retracted

on the same day, upon recording the fact that the statement was obtained under force, threat and coercion and a copy thereof was again sent to the same DRI authority. This suppression of material fact was resorted to by the Commissioner deliberately, since as per settled principles of law, the purported statement of the appellant upon by the Commissioner, in the premises of these subsequent facts, has or can have no evidentiary value whatsoever. This also has vitiated the said order and has rendered the same illegal, invalid and untenable.

(vi) Further and in any event, the appellant being a co-noticee and the purported statement of the importers and others, in any event, so far as the appellant was concerned with, is patently false and has no evidentiary value, more so without affording the appellant an opportunity to cross examine the importers and others by the appellant in spite of specific request being made therefor. No reliance therefore can be placed of the said purported statement of importers and others and the Commissioner has erred in law in purporting to do so. In this respect reference can be made the following decisions.

- *2023 (9) TMI 733 – Calcutta High Court - Ajay Saraogi Versus Union of India and Special Director, Enforcement Directorate, Foreign Exchange Management Act, New Delhi & Anr.*
- *2024 (7) TMI 767 – CESTAT Ahmedabad - GK Enterprises Versus Commissioner of Customs – Mundra Customs*

(vii) The said impugned order, in so far as the same has imposed penalty upon the appellant, is contrary to law and/or facts and is ex-facie illegal, invalid and bad.

(viii) The said order, in so far as the same is against the appellant, is misconceived, harassing, contrary to law and has no substance or merit whatsoever. The finding made against the appellant is patently erroneous, false and based on imaginary assumptions and presumptions. Not a single piece of evidence has been disclosed in the show cause notice or in the said order in support of these findings. There has been no illicit activity of any kind whatsoever by the appellant in the instant case. All documents executed and/or submitted by the appellant, were for legal and valid importation of goods. No evidence to the contrary has been disclosed. Further, there is also no evidence, and none has been disclosed, of the appellant aiding or abetting any of the other show cause noticees in importation of the said goods in contravention of the statutory provisions involved. The purported finding that the appellant knew about the alleged fraudulent activities of the said show cause noticee is wholly erroneous and untenable. No material has been disclosed in support of this misconceived and baseless finding. In the premises, the imposition of penalty upon the appellant under Section 112(a)(ii) of the Act is without the condition precedent therefor being satisfied and is untenable and unsustainable.

(ix) The Commissioner failed to appreciate that as per settled principles of law suspicion, however grave, cannot take the place of proof. However, from the allegations made in the show cause notice and the findings in the said order it is apparent that the entire purported case against the appellant has been fabricated on mere suspicion, surmise and conjectures and penalty has been imposed upon him based thereon. This is impermissible in law.

(x) Without prejudice to the aforesaid and fully relying on the same, further and in any event, the said order does not provide any explanation or basis as to the manner in which the Commissioner has purported to determine the appellant was liable to penalty of Rs.25,00,000/- under Section 112(a)(ii) of the Act or has dealt with any of the factors that may have served to facilitate quantification of the same. Evidently the imposition of penalty in the manner aforesaid upon the appellant is non-reasoned and non-speaking, besides being inequitable, arbitrary, unreasonable and perverse and hence, is untenable and unsustainable.

6.1. In view of the above submissions, it is contended that it conclusively evident that the impugned order, in so far as the same against the appellant, is illegal, invalid, untenable and unsustainable. Accordingly, the Ld. Counsel for the appellant prayed for setting aside the impugned order passed by the Commissioner upon quashing the penalty imposed upon him, with consequential reliefs to the appellant.

7. On the other hand, the Ld. Authorized Representative of the Revenue justified the imposition of penalty on the appellant under Section 112(a) of the Act, which, according to him, requires to be upheld in the facts and circumstances of the case. Accordingly, it is his contention that the appeal is required to be rejected.

8. Heard the parties and considered their submissions.

9. Having considered the submissions advanced by both the sides, we find that the issue to be decided in this appeal is confined to the limited question of the sustainability of the penalty of Rs.25,00,000/- imposed upon Shri Manoj Arjun Gore under Section 112(a)(ii) of the Customs Act, 1962. The other issues forming part of the said Show Cause Notice, and the merits or otherwise of the consequential duty liabilities, are not the subject matter of the present appeal.

10. At the outset, we note that the very issue concerning the imposition of penalty upon the present appellant, arising out of the same investigation and founded upon substantially identical allegations, has already been considered by this Tribunal in the appellant's own case viz. *Manoj Arjun Gore v. Commissioner of Customs [2025 (11) TMI 135 – CESTAT Chennai]*. The relevant portion of the said decision is reproduced below:

> *"9. As regards Shri Manoj Arjun Gore, the charge against him is that he in collusion with Indian importers devised an illegal scheme to evade anti-dumping duty by routing goods of Chinese goods through Malayasia. We have seen that the main charge against Shri Manoj Arjun Gore of obtaining*

> *fake COO certificates from the Malaysian Authorities were never investigated or followed up by revenue with the Malaysian authorities and hence the burden of proof has not been discharged by revenue. The electronic documents relied upon against the appellant are found to be not admissible as evidence. Hence the question of imposition of penalty upon him does not arise. This being so, we do not feel it necessary to examine the legal issue as to whether the company alone was liable to a penalty or whether the appellant who was working abroad would come under the ambit of the Customs Act prior to 28.03.2018."*

10.1. The aforesaid decision was subsequently followed by this Tribunal in the appellant's own case in *Manoj Arjun Gore v. The Commissioner of Customs (II), Chennai [2026 (4) TMI 317 – CESTAT Chennai]*.

10.2. The issue, therefore, is no longer res integra. In the absence of any contrary decision being brought on record by the respondent, we see no justifiable reason to adopt a different approach. The penalty imposed upon the appellant under Section 112(a)(ii) of the Customs Act, 1962, is, accordingly, liable to be set aside.

11. In any event, from a perusal of the material placed on record, it is clear that no evidence has been disclosed to substantiate the allegation that the Certificates of Origin issued by the Malaysian authorities were not signed by duly authorised persons, or that the signatures appearing thereon were forged, or that any discrepancy had been established in the contents of the certificates themselves. The applicable ASEAN Rules prescribe the procedure for verification of such certificates, in cases where their authenticity or correctness is doubted,

which exercise has not been undertaken by the Revenue in this case. We further observe that, although the ld. adjudicating authority has relied substantially upon the detailed modus operandi allegedly described by the appellant in his statement dated 25.07.2013 as corroboration of the DRI's findings, the said statement was in fact retracted by the appellant, as borne out by the record. It is also the appellant's specific case that he was subsequently summoned and compelled to give a further statement, which too was retracted on the same day by recording his allegation that it had been obtained under force, threat and coercion, and that a copy of the retraction was again sent to the concerned DRI authority. These circumstances required the statements to be examined with due caution, particularly when the appellant's request for cross-examination was declined, notwithstanding the statutory safeguards governing the use of statements under Section 138B of the Customs Act, 1962. The further finding that the appellant was aware of the alleged fraudulent activities of the importing firms and other noticees is likewise unsupported by any specific material disclosed on record establishing such knowledge. The appellant's alleged association with the Malaysian entity, or the attribution to him of a role in the commercial arrangements, cannot, without adequate and legally admissible evidence establishing the requisite statutory ingredients, be a substitute for proof of the conduct contemplated by Section 112(a)(ii) ibid. Viewed cumulatively, the Revenue has failed to furnish a sustainable foundation for the penalty imposed upon him.

12. In the aforesaid circumstances, and by relying on the decisions cited supra, we hold that the statutory conditions necessary to sustain the penalty under Section 112(a)(ii) of the Customs Act, 1962, have not been established and consequently, the penalty of Rs.25,00,000/- imposed upon Shri Manoj Arjun Gore under Section 112(a)(ii) of the Customs Act, 1962, is set aside.

13. In these terms, the appeal is allowed.

(Operative part of the order pronounced in the open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd