

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE**

**BEFORE:  
THE HON'BLE JUSTICE OM NARAYAN RAI**

**WPO 679 OF 2025  
SUDIPTA BOSE  
VS.  
UNION OF INDIA & ORS.**

For the Petitioner : Ms. Micky Chowdhary, Adv.  
Mr. B.N. Pal, Adv.

For the Respondents : Ms. Manasi Mukherjee, Adv.  
Ms. Ekta Sinha, Adv.

Hearing Concluded on : 26.02.2026

Judgment on : 27.04.2026

**Om Narayan Rai, J.:-**

1. This writ petition under Article 226 of the Constitution of India assails an order in original dated July 22, 2025 passed by the Additional Commissioner of Customs (Export), Kolkata Customs (Port) Commissionerate whereby penalty to the tune of Rs.50 lakh (Rupees Fifty lakh) has been imposed upon the petitioner under Section 114(iii) of the Customs Act, 1962 (hereafter "the 1962 Act").

**FACTS OF THE CASE:**

2. The relevant facts are as follows:-
  - a) One M/s KSH International, (hereafter "the exporter") filed five Shipping Bills bearing Nos. 6946049, 6946061, 6946065, 6946071 & 6946075 all dated 23.01.2024 (hereafter "the said shipping bills"), through their authorised Custom Broker M/s Bose Enterprise, whereof the petitioner is

a proprietor for exporting goods declared by the exporter as energy drinks. The said consignments were to be exported to one Balaji Food Stuff Trading LLC, UAE.

- b)** On January 29, 2024, the goods covered under the said shipping bills underwent 100% examination conducted by the Shed Officers stationed at the Transworld Terminals Private Limited Customs Freight Station (CFS), in the presence of officers from the Special Intelligence and Investigation Branch (Port), a representative of the Customs Freight Station (the custodian) and an authorized representative of the Customs Broker, as documented under the Panchanama dated January 29, 2024.
- c)** As the declared value of the goods appeared to be grossly inflated therefore based on the reasonable belief that the same were liable for confiscation under Section 113 of the 1962 Act, the goods were seized under Section 110(1) of the said Act on February 16, 2024.
- d)** Upon verification of the export documents and the data of the Indian Customs Electronic Data Interchange System (ICES) it was observed that the exporter had claimed total incentives of Rs.1,37,138.09/- (Rupees One lakh thirty-seven thousand one hundred thirty-eight rupees and nine paise only) comprising a drawback amount of Rs.31,647.09 (Rupees Thirty one thousand six hundred forty seven rupees and nine paise only) and Remission of Duties and Taxes on Exported Products (RoDTEP) to the tune of Rs.1,05,491/- (Rupees One lakh five thousand four hundred ninety one only).
- e)** Since there was stark disparity between the price printed on the goods and the value declared in the shipping bills, which cast doubts on the

genuineness of the export consignments therefore a detailed investigation as regards the export consignments of M/s KSH International was initiated by the Customs.

f) On 100% examination of the relevant container the following aspects emerged:

- i. There were two categories of drinks bottles. The first category comprised a total of 396 crates containing 9504 pink coloured 250 ml PET bottles labelled '*Quarter Energy Drink*' with '*B.No. 26D23 P5, MFD-26/12/2023, MRP..... (For Export Only)*' printed on the neck of such bottles. The second category consisted of type 63936 red coloured 180ml PET bottles labelled as '*RoohAfza Red Rush*' with "*MFG: 22/11/2023, EXP: 21/05/2024, FOR EXPORT*" printed on the neck of such bottles. Such bottles and the crates holding them were dirty, stained and scratched. Some crates had stickers showing "*MRP Rs.480.00, Batch No. HWO001, Date of MFG: 10/03/23, Use By: 09/06/2023*" and the stickers on many of the crates were torn off at the place where "*MFG*" and "*Use By*" dates were mentioned. The writings on the neck of such bottles contradicted those on the stickers pasted on the crates.
- ii. While the declared total gross weight of the goods was 24,300 kgs, as per the weighment slip of CFS Transworld, the actual total gross weight of the goods was 15,410 kgs (excluding the tare weight of the container being 2200 kgs).
- iii. The unit F.O.B. value declared for the goods sought to be exported appeared to be unreasonably high, although there was no value

addition. It *prima facie*, appeared that the declared value of the goods was highly inflated/overvalued.

- g.** After examination of the export goods, samples were drawn from the consignment and sent to National Food Laboratory, FSSAI for testing. The test results confirmed that the samples collected from the bottles containing RoohAfza Red Rush conformed to the standards laid down under Regulation no. 2.10.6 (1) of Food Safety and Standards (Food products Standards and Food Additives) Regulations, 2011 but the ones collected from the bottles containing Quarter Energy Drink did not conform to such standard and were unsafe.
- h.** As the two types of energy drinks found in the relevant container were of two different manufacturers namely Hamdard Laboratories and of Balaji Agro Foods therefore letters were sent to both the manufacturers seeking wholesale price of their beverages. The said two manufactures wrote back informing about their respective prices, which were far less than the declared FOB. This was indicative of the exporter's intention to defraud the exchequer by claiming higher export benefits on the strength of highly overvalued FOB of the goods.
- i.** On April 23, 2024 the exporter requested for provisional release of the goods as the buyer had allegedly cancelled the order. Accordingly, on May 13, 2024 provisional release of 180ml Red Rush RoohAfza bottles/crates (which conformed to the FSSAI standards) was allowed with approval of the Commissioner of Customs (Port) on execution of bond for a sum of Rs.1,84,27,953.60 (Rupees One crore eighty four lakh twenty seven thousand nine hundred fifty three and sixty paise only) equivalent to the

declared FOB value of the goods and on submission of a Bank guarantee for a sum of Rs.60,00,000/- [Rupees sixty lakh only] as per CBIC Circular No. 01/2011-Customs dated 04.01.2011 read with CBIC Circular No. 30/2013-Customs dated 05.08.2013 under the provisions of Section 110A of the 1962 Act.

- j.** Subsequently summons dated February 20, 2024 was issued to the petitioner (being the Customs Broker) under Section 108 of the 1962 Act. The petitioner appeared before the SIIB Port on February 20, 2024 when his voluntary statement was recorded wherein the petitioner *interalia* stated that the job pertaining to export of the subject consignment was given to him by one Shri Hariom Mishra alias Pradeep Mishra.
- k.** On August 07, 2024 when Shri Hariom Mishra was summoned for recording his voluntary statement, he denied having any knowledge about the consignment.
- l.** Consequently, another summons was issued to the petitioner on September 30, 2024. In response thereto, the petitioner appeared before the SIIB (Port) on October 21, 2024 and his statement was recorded.
- m.** It is the petitioner's case that his statement was found to be correct as the same stood corroborated by the statements of one Shri Manab Ghosh given on October 23, 2024 and Shri Hariom Mishra @ Pradeep Mishra given on November 26, 2024.
- n.** Thereafter, show cause notices dated February 13, 2025 were issued to the exporter and all others involved including the petitioner by the Customs. The notice issued to the petitioner required him to show cause as to why penalty under Section 114(iii) of the 1962 Act should not be

imposed upon the petitioner. The show cause notice *interalia* alleged that the petitioner had failed to exercise due diligence by accepting documents from an unauthorised person without making any further effort to check the genuine existence of the exporter and had thus failed to perform his duty in terms of Customs Broker Licensing Regulations, 2018 (hereafter the “2018 Regulations”). The notice also alleged that failure of duty on the part of the petitioner was such that the same would have allowed a fraudulent export to take place resulting in substantial loss to the Government exchequer.

- o.** The petitioner filed his written submission to the show cause notice on May 01, 2025 thereby denying the charges levelled against him and asserting *interalia* that the petitioner was not at all concerned with the declaration and the overvaluation of export goods and that the petitioner had accepted the said job of the exporter through an intermediary Shri Hariom Mishra in the usual course of business upon verifying all the requisite KYC documents.
- p.** The show cause noticees were given an opportunity of being heard. The petitioner duly attended the hearing and the Additional Commissioner of Customs (Port), ultimately passed the order in original dated July 22, 2025 which has been impugned in the present writ petition.

**SUBMISSIONS ON BEHALF OF THE PETITIONER:**

- 3.** Ms. Chowdhary, learned Counsel appearing for the petitioner made the following submissions:-

- a. The notice dated February 13, 2025 called upon the petitioner to show cause as to why penalty would not be imposed upon the petitioner on account of the petitioner's failure "*to perform due diligence*" in the case and for accepting export documents from an unauthorised person without making any further effort to check for the genuine existence of the exporter.
- b. The petitioner replied to the said notice to show cause on May 1, 2025 detailing therein his defence and contending that the petitioner had exercised due diligence as also that the petitioner had not abetted in the illegal act with which the petitioner was charged.
- c. In the said reply, the petitioner had referred to several judgments of the Appellate Tribunal as well as of this Court to contend that any liability accruing from any mis-declaration in a bill of entry or a shipping bill could not be attributed to the customs broker and that the same was only attributable to the importer or the exporter.
- d. The adjudicating authority took into consideration the petitioner's reply to the notice to show cause and ultimately passed the order impugned thereby imposing penalty of Rs.50 lakh (Rupees Fifty lakh) on the petitioner.
- e. The order impugned has been passed in total violation of the principles of natural justice, inasmuch as none of the submissions made by the petitioner has been considered by the adjudicating authority.
- f. Although the petitioner's reply has been briefly recorded in the order impugned, the content thereof has not been dealt with.

- g.** The petitioner's specific stand to the effect that the petitioner being a customs broker could not be visited with any penalty or liability on the ground of there being any mis-declaration in any bill of entry or shipping bill, has been overruled on the basis of conjectural conclusions.
- h.** The adjudicating authority has not dealt with any of the judgments that the petitioner has cited in support of his said contention. A judgment of the Hon'ble Division Bench of this Court in the case of **Artee Overseas Pvt. Ltd. vs. Union of India**<sup>1</sup> was cited to contend that in a similar situation, the Hon'ble Division Bench of this Court was pleased to set aside the order passed by the Customs Authority and remand the matter for fresh consideration since the same had been passed without dealing with the judgment cited by the appellant therein in support of its case.
- i.** The adjudicating authority has imposed a higher standard of duty on the petitioner than the petitioner as a customs broker is required to discharge, by holding that the petitioner has not physically verified the firm of the exporter and has not met the exporter in person.
- j.** A ruling of the Hon'ble Division Bench of this Court in the case of **Commissioner of Customs (Admn. & Airport), Kolkata Vs M/S Sunglory Agency**<sup>2</sup> was cited in support of the proposition that a customs broker is not required to physically visit the premises of each of its clients for verification and that verification using documents and data information if the same are authentic, should be enough to discharge the customs broker's obligations.

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<sup>1</sup> 2016 (332) E.L.T. 470 (Cal.)

<sup>2</sup> CUSTA 13 of 2023 decided on October 11, 2023

- k.** The respondent/Customs Authority, while passing order impugned, failed to take into consideration the decision of the Appellate Tribunal rendered in the case of ***World Cargo Movers Vs Commissioner of Customs, New Delhi***<sup>3</sup> which held that it was no part of the job of the customs broker to compare the invoice price with the market price of identical goods for the purpose of checking correctness of the value declared in export documents.
- l.** A judgment of the Hon'ble Supreme Court in the case of ***Union Of India And Others Vs Kamlakshi Finance Corporation Ltd.***<sup>4</sup> was pressed to contend that the adjudicating authority could not have ignored the judgment of the Appellate Tribunal inasmuch as it was bound thereby.
- m.** The adjudicating authority has reached the impugned decision in a most perverse manner and the same should, therefore, be set aside.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

- 4.** Ms. Mukherjee learned Advocate, assisted by Ms. Sinha, learned Advocate, appearing for the respondent Customs authorities submitted as follows:-
- a.** The petitioner had miserably failed in performing the 'due diligence' exercise. The very fact that the petitioner accepted documents from a third party and not from the exporter, is an indicator that the petitioner had abdicated his duty. In such regard attention of the Court was drawn to the answer given by the petitioner to question no. 2 of the voluntary statements recorded under Section 108 of the 1962 Act on February 20, 2024.

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<sup>3</sup> 2002 (139) E.L.T. 408 (Tri-Del)

<sup>4</sup> 1992 Supp (I) SCC 433

- b.** The findings of the adjudicating authority at paragraph 1.3 of the order in original show that there was a steep difference in the price printed on the goods and the value declared in the shipping bills and this raised suspicion.
- c.** Findings at paragraph 1.4 of the order in original show that on scrutiny, stickers were found on the crates of the first type (of 250 ml pink colored bottles drinks) and on the neck of the bottles, wherein it was printed that the same were for export only.
- d.** Various anomalies in the goods attempted to be exported as indicated in paragraph 1.4 of the order in original were also placed before Court.
- e.** The voluntary statement made by the petitioner on February 20, 2024 was placed to assert that the petitioner had knowledge that the goods had been enormously overvalued.
- f.** A customs broker always acts for or on behalf of the customs department and as such he has a high standard of duty. In the case at hand, the petitioner has miserably failed in discharging his duty.
- g.** It is clear from the statements made by the petitioner that he has scrutinized the documents and that being so he should not have acted negligently.
- h.** The voluntary statements made by the petitioner would reveal that the petitioner was aware of the difference in price declared by the exporter and the actual price at which the energy drink bottles were sold in market.
- i.** Regulation 10(e) of the 2018 Regulations was cited to assert that a customs broker has a duty of due diligence and that in case at hand the

petitioner has failed to perform his duty in accordance with the said Regulations by accepting the export documents despite having knowledge about the gulf of difference in the price of the aforesaid bottles.

### **REJOINDER SUBMISIONS BY THE PETITIONER**

5. Ms. Chowdhary, learned Advocate appearing for the petitioner rejoined by submitting as follows:

- a. It will be evident from the scrutiny of the statements made by the petitioner that the petitioner was shown the relevant website pertaining to the aforesaid energy drink on the date of recording of his statements and it was in such context that the statement cited by the Customs Authorities was made.
- b. There is nothing on record to suggest that the petitioner knew about the alleged difference in price at the time of filing the export documents and shipping bills.
- c. In any case, valuation does not form part of the duty required to be discharged by the customs broker. A judgement of the Hon'ble Division Bench of the Hon'ble Delhi High Court in the case of ***Kunal Travels (Cargo) Versus C C (I & G), IGI Airport, New Delhi***<sup>5</sup> was cited to contend that valuation was not within the work domain of the customs broker (i.e. the petitioner in the case at hand) and as such the order in original could not have fastened any liability on the petitioner on such score.
- d. The shipping bills were filed on January 23, 2024 but the imported material arrived in a container the next day i.e. January 24, 2024 and

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<sup>5</sup> 2017 (354) E. L. T. 447 (Del.)

the voluntary statement of the petitioner was recorded a month later on February 20, 2024. It is therefore unreasonable to assume that the petitioner had knowledge about the price variation at the time of filing the shipping bills.

**ANALYSIS & DECISION:**

6. Heard learned Advocates for the respective parties and considered the material on record.
7. The impugned order in original is assailable before the Commissioner (Appeals) under Section 128 of the 1962 Act. There is, therefore a statutory remedy of appeal available. However, it is now well settled that a Writ Court is not denuded of its authority to intervene even in cases where an alternative remedy is available in the form a statutory appeal if the same falls within any of the following categories<sup>6</sup> viz. - (a) breach of principles of natural justice; (b) infringement of fundamental right; (c) challenge thrown to the *vires* of any Act or statutory provision; (d) an action wholly without jurisdiction or in excess of jurisdiction; (e) where the statutory authority has not acted in accordance with the provisions of the enactment which regulates it.
8. The order in original dated July 22, 2025 has been sought to be impeached by the petitioner on the grounds that - the same has been passed in violation of the principles of natural justice; that penalty has been imposed for failure to physically verify the address of an exporter who indulged in overvaluation of export goods without appreciating that there is no

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<sup>6</sup> Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1; Commr. of State Tax v. Commercial Steel Ltd., (2022) 16 SCC 447; PHR Invent Educational Society v. UCO Bank, (2024) 6 SCC 579

obligation on the part of a customs broker to conduct physical verification; and that a binding precedent by CESTAT in the case of **World Cargo Movers** (supra), which holds that it is not for a customs broker to check the correctness of value of goods, has been ignored and not followed.

9. The show cause notice dated February 13, 2025 framed the following charge against the petitioner:-

*“Shri Sudipta Bose, Customs Broker M/s Bose Enterprise, being authorised CB failed miserably to perform ‘due diligence’ in this case by accepting documents from an unauthorised person Shri Hariom Mishra, without making any further effort to check for the genuine existence of the exporter. It is the obligation of the Customs Broker to advise his client to comply with the provisions of the Act, however Shri Sudipta Bose failed to perform his duty as per Customs Broker Licensing Regulations, 2018. The failure of the CB would have otherwise allowed the fraudulent export to take place resulting in substantial loss to the government exchequer in the form of export benefits which the exporter was not eligible to claim. Hence for its acts of omission and commission, which rendered the impugned export goods liable to confiscation under Section 113 of the Customs Act, 1962 the CB M/s Bose Enterprise, appears to be liable for penal action under Section 114(iii) of the Customs Act, 1962”*

10. The petitioner has thus been charged on two counts:

- a). Failure to exercise due diligence by accepting export documents from an unauthorised person Shri Hariom Mishra, without making any further effort to check for the genuine existence of the exporter;
- b). Failure to advise his client to comply with the provisions of the Act in terms of the 2018 Regulations.

11. In reply to the show cause, the petitioner has asserted that the petitioner had taken up the job of processing the export consignment related to the said shipping bills through the intermediary Shri Hariom Mishra “in routine course” of business “on receipt of all the requisite KYC documents such as

*Authorisation Letter, Customer Information Sheet (Signature verified by Bank), cancelled cheque in the name of KSH International, PAN Card of the Proprietor and the GST Registration Certificate of the firm.”* The petitioner has cited several judgments in the said reply including the judgment of the Appellate Tribunal i.e. CESTAT in the case of **World Cargo Movers** (supra) and asserted that misdeclaration pertaining to any of the particulars mentioned in the Bills of Entry or Shipping Bills is only relatable to the exporter and the same cannot be attributed to the petitioner who is a customs broker.

- 12.** The order in original has after extensively quoting from the show cause notice as also several provisions from the 1962 Act and after referring to the replies filed by the petitioner and one other noticee, ultimately dealt with the petitioner’s case in paragraphs 34, 34.1, 34.2 and 34.3 of the order under the caption **“Discussion and Findings”**. Paragraph 34 once again refers to the allegation against the petitioner in the show cause notice, paragraph 34.1 is a brief recount of the petitioner’s stand in reply to the show cause notice and paragraph 34.2 refers to the submissions made on behalf of the petitioner during the hearing. Paragraph 34.3 contains the reasons and the ultimate conclusion arrived at by the proper officer, which reads thus:

*“It is observed from the statements recorded Shri Sudipto Bose (Proprietor of Custom Broker M/s Bose Enterprise) under Section 108 of the Customs Act, 1962 and their written submissions that all the documents in respect of the goods attempted to be exported vide the five Shipping Bills Nos. 6946049, 6946061, 6946065, 6946071 & 6946075 all dated 23.01.2024 were provided to them by a third party i.e. Shri Hariom Mishra alias Pradeep Mishra, who had introduced himself as dealing hand of the exporter. The noticee in his statement recorded under Section 108 of the Customs Act, 1962 has stated that he had verified IEC from DGFT website, verified GSTIN from gst.gov.in website, bank details provided by the exporter were itself verified by the bank and it is impossible to verify the functioning of his client at the declared*

*address since the exporter is a Ludhiana-Delhi based merchant trader. Therefore, it is evident that Customs Broker has made no efforts to meet the exporter in person nor physically verified the firm addresses. When the declared value of goods is Rs.2,59,40,250/- and there are huge export benefits and input tax credit is involved, it is difficult to digest that the Customs Broker would not take minimum steps to know the exporter and just rely on a third party to facilitate the fraudulent exports. Therefore, culpability of the Customs Broker in this case of grossly overvalued export attempt cannot be ruled out. I therefore hold that the Customs Broker is indeed involved in the attempt to fraudulently export the grossly overvalued goods and by their act of omission and commission which has rendered the impugned goods liable to confiscation under Section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962. Hence, Sh. Sudipta Bose - (Proprietor of Custom Broker M/s Bose Enterprise) is liable for penal action under Section 114(iii) of the Customs Act, 1962”*

**13.** It is clear from a perusal of the above order that absence of effort on the part of the petitioner to meet the exporter in person or to physically verify the address of the exporter has led to the conclusion that the petitioner is involved in the attempt to export the grossly overvalued goods.

**14.** In this connection, Regulation 10(n) of the 2018 Regulations deserves notice:

*10. Obligations of Customs Broker:*

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*(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;*

**15.** Apparently, the aforequoted provision does not mandate a customs broker to physically verify the address of its client or to meet the client personally. The customs broker is required to verify the “*identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information*”.

16. In this connection the observations of the Hon'ble Division Bench in the case of **Sunglory Agency** (supra) may be relevant. That was a case where an order passed by CESTAT, Kolkata had been assailed by the Commissioner of Customs by way of a statutory appeal under Section 130 of the 1962 Act and regulation 10(n) had fallen for consideration before the Hon'ble Division Bench. After discussing the facts of the case, the Hon'ble Division Bench concurred with the decision of CESTAT to the effect that "*it will be extremely difficult, if not totally impossible for Customs broker to physically visit the premises of each of its client for verification*". In yet another decision of the Hon'ble Division Bench of this Court in the case of **Commissioner of Customs v. Granada Air Services (P) Ltd**<sup>7</sup>, the decision of CESTAT on the point that Regulation 10(n) does not require the customs broker to physically verify its client's address was upheld. Thus law as regards the purport of Regulation 10(n) seems to be fairly well settled.
17. On a combined reading of the petitioner's stand and the order impugned, it would be evident that the proper officer has not returned any finding as regards the KYC documents which the petitioner claims to have verified and the exercise undertaken by the petitioner for verifying the exporter's IEC, GSTIN and the bank details. The proper officer seems to have focussed on an area beyond the Regulations while ignoring the relevant material that required his attention. In fact the following submissions of the petitioner, made in reply to the show cause notice, do not appear to have been addressed by the proper officer at all in the order impugned:

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<sup>7</sup> 2023(386)ELT 523 (Cal)

*“As a Customs Broker, in routine course of our business, we obtained the export processing job against five Shipping Bills of M/s KSH International through an intermediary Shri Hariom Mishra on receipt of all the requisite KYC documents such as Authorisation Letter, Customer Information Sheet (Signature verified by Bank), cancelled cheque in the name of KSH International, PAN Card of the Proprietor and the GST Registration Certificate of the firm. All these documents were issued by different government departments including CBIC and the CBDT and therefore, question of doubting the credentials thereof did not arise. Under the CBLR, 2018 these documents and verification of the same were sufficient to meet KYC requirements. After obtaining and verifying the KYC documents, we collected the invoice cum packing list along with signed copy of FEMA declaration certificate from the intermediary Shri Hariom Mishra and filed these Shipping Bills on 23.01.2024. Therefore for misdeclaration of goods and valuation thereof no blameworthy culpability can be attributed to us.”*

**18.** The proper officer has not cited any reason in the order impugned as to why the petitioner’s verifications of the KYC documents of the exporter were not sufficient. The proper officer has, after referring to the show cause notice, the petitioner’s reply thereto and the petitioner’s statement, straightway reached a conclusion that the failure of the petitioner to meet the exporter in person or to physically verify the exporter’s address renders the petitioner culpable in the attempted export of overvalued goods. There is evidently no reason at all. The conclusion is based merely on a possibility and not on a finding of fact.

**19.** In the instant case penalty has been imposed under Section 114(iii) of the 1962 Act upon the petitioner. The said provision reads thus:

**114. Penalty for attempt to export goods improperly, etc.**

*Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable -*

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*(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater*

- 20.** A meaningful reading of the provision would indicate that for assuming jurisdiction to impose penalty on any person it must be established that the person concerned has either committed an act or omission or abetted in such act or omission which has rendered the goods referred to in the said provision liable for confiscation. There should, therefore, be a finding of fact to that effect. Such a finding is a jurisdictional requirement. If such a finding is there a Writ Court may be slow to interfere as the same would be a finding of fact. However without such a finding, the order imposing penalty may be one without jurisdiction.
- 21.** Now in the instant case, the finding, if at all the same can be said to be one, is that the petitioner did not physically verify the exporter's address. Can, in the facts of the present case, mere non physical verification of the exporter's address by the petitioner or not meeting with the exporter personally amount to either an act or omission or abetment in such act or omission? Going by the Regulations as already discussed hereinabove, that by itself may not be sufficient to clothe the proper officer with authority to impose penalty under Section 114(iii) of the 1962 Act. This is all the more so since in the present case the proper officer has not returned any finding at all as regards verification of the KYC documents of the exporter and other documentary verification claimed to have been done by the petitioner.
- 22.** Moreover, as already indicated earlier, it would be clear from the last few lines of paragraph 34.3 of the order impugned, which has already been extracted hereinabove, that the proper officer has imposed penalty on the petitioner only on the basis of a possibility and not a finding.

**23.** As regards the second charge, pertaining to the petitioner's failure to advise his client (in terms of the 2018 Regulations) to comply with the provisions of the 1962 Act, the petitioner has relied on the judgments of CESTAT in the case of **World Cargo Movers** (supra) and of the Hon'ble Delhi High Court in the case **Kunal Travels (Cargo)** (supra) and contended that since valuation of goods is beyond the domain of customs broker, the petitioner cannot be penalised for failure to exercise due diligence as regards the same. It is the petitioner's contention that in view of the CESTAT judgment in the case of **World Cargo Movers** (supra), the petitioner could not be held liable in a case of overvaluation of the goods attempted to be exported. Relying on the judgment of the Hon'ble Division Bench of this Court in the case of **Artee Overseas Pvt. Ltd.** (supra) it has been contended that non consideration of such judgment constituted violation of principles of natural justice.

**24.** In **World Cargo Movers** (supra) CESTAT New Delhi has held as follows:  
*"6.....It is no job of the CHA to compare the invoice price with the market price of identical goods for the purpose of checking correctness of the value declared in export documents. It is upto the exporter to ensure the correctness before instructing/advicing the CHA"*

**25.** In **Artee Overseas Pvt. Ltd.** (supra) the Hon'ble Division Bench of this Court has while agreeing with a judgment of the Hon'ble Bombay High Court held as follows:

*The subject matter of challenge before the Writ Court was an order passed by the Additional Commissioner of Customs on 20<sup>th</sup> December, 2012 confirming a demand of Rs.14,20,122/-. The learned Trial Court dismissed the writ petition on the ground that the writ petitioner has an efficacious alternative remedy. Aggrieved by the order of the learned Trial Court, the present appeal was filed. Mr. Choudhury, learned Advocate appearing for the appellant/writ petitioner submitted that his client had before the Additional Commissioner of Customs relied on a judgment in the case*

of *Padmini Exports v. Union of India*, reported in 2012 (284) ELT 490 (Gujarat), but the Additional Commissioner of Customs did not consider the judgment and got rid of the same by holding that the judgment was in respect of a different case. The aforesaid observation is by no means enough to get rid of a judgment cited by a litigant. The Additional Commissioner of Customs was under an obligation to consider the judgment and to disclose as to why the ratio of that judgment is not applicable to the facts and circumstances before him. He obviously did not do so. Mr. Choudhury has drawn our attention to a Division Bench judgment of Bombay High Court in the case of *Century Textiles Industries Ltd. v. Union of India*, reported in 2008 (232) ELT 389 (Bombay) wherein the following views were taken:

“It appears from the record that the petitioner was relying upon the law laid down by the Supreme Court in the case of *Government of India v. Madras Rubber Factory Limited* reported in 1995 (77) ELT 433 (SC). That judgment has been referred to in the original order, but perusal of the order passed by the Commissioner (Appeals) shows that the Commissioner (Appeals) has not considered that judgment and has not given any reasons why the case of the petitioner is not covered and how that judgment is distinguishable and without recording such finding, the Commissioner (Appeals) has recorded a finding that the Revenue has very strong case. In our opinion, therefore, the Commissioner (A) has failed to consider material which was relevant for making an order. A quasi Judicial authority cannot exclude from its consideration the material which is relevant. If it does so, the order suffers from non-observance of the principles of natural justice.”

2. We are in agreement of the aforesaid views expressed by the Bombay High Court. We, therefore, are of the opinion that there has been violation of principles of natural justice and in such case alternative remedy is no bar. The order dated 20<sup>th</sup> December, 2012 passed by the Additional Commissioner of Customs is, therefore, set aside. The matter is remanded to him.

26. The judgment of the Hon’ble Division Bench in the case of **Artee Overseas Pvt. Ltd.** (supra) applies on all fours in the case at hand.

27. The CESTAT judgment in **World Cargo Movers** (supra) would be binding on the proper officer as held by the Hon’ble Supreme Court in the case of **Kamlakshi Finance Corporation Ltd.** (supra). It was, therefore, incumbent on him to either follow it as a binding precedent or if, for any reason, he felt that the same was not applicable to the facts of the present case, then to cite such reason while dealing with the said judgment. This

was all the more so since the proper officer had taken a decision adverse to the petitioner.

**28.** In ***Kunal Travels (Cargo)*** (supra), the Hon'ble Delhi High Court has held as follows:

*12. ....Regulation 13(e) of the Customs House Agents Licensing Regulations, 2004 requires the customs house agent to : "exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage" (emphasis supplied). The customs house agents due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a customs house agent are on the basis of instructions/documents received from its client/importer/exporter. Furnishing of wrong or incorrect information cannot be attributed to the customs house agent if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The misdeclaration would be attributable to the client if wrong information were deliberately supplied to the customs house agent.*

(Emphasis by underscoring)

**29.** Regulation 10(e) of the 2018 Regulations (which has been relied on by the revenue) is in *pari materia* with Regulation 13(e) of the earlier i.e. the 2004 avatar of the 2018 Regulations. Seen in the light of the aforesaid judgment, it will be clear from the facts of the present case that here again there is no finding that the petitioner has knowingly (not "*innocently*") filed the relevant documents furnished to him by his client.

**30.** The Court is aware that the revenue had referred to the voluntary statement made by the petitioner on February 20, 2024, especially the petitioner's answer to question no.10, which had been put to him to attribute knowledge to the petitioner. The same was sought to be refuted by the petitioner by submitting that such answer had been given by the petitioner upon the

website of *Hamdard* being shown to him and that there is nothing on record to suggest that the petitioner knew about the alleged difference in price at the time of filing the export documents and shipping bills. However, since the order impugned does not reveal any consideration of the aspect argued by the revenue in Court, therefore, it would not be proper to enter into the same in a writ proceeding under Article 226 of the Constitution of India since the same lies in the domain of disputed questions of fact. It should, therefore, be decided by the proper officer himself.

- 31.** For all the reasons aforesaid, the order impugned deserves interference. The same is set aside (to the extent the same imposes penalty upon the petitioner) and the matter is remanded to the adjudicating authority/proper officer for taking a fresh reasoned decision in accordance with law upon notice to the petitioner and upon considering all the material on record. The adjudicating authority/proper officer shall be free to conduct such other or further inquiries and seek such other or further clarifications as may be permissible in law, in order to take appropriate decision in the matter.
- 32.** WPO 679 of 2025 stands disposed of with the above observations. No costs.
- 33.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

**(Om Narayan Rai, J.)**