ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 06.06.2025

CESTAT Delhi Clears Customs Broker of ₹50 Lakh Penalty in Alleged IEC Misuse

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, has set aside penalties imposed on M/s GND Cargo Movers, a licensed customs broker, for alleged violations related to the misuse of an Importer Exporter Code (IEC). The judgment, authored by Justice Dilip Gupta (President) and Ms. Hemambika R. Priya (Technical Member), nullifies the order passed by the Commissioner of Customs (Appeals) on 31 May 2019, upholding the principles of procedural justice and statutory compliance under the Customs Act, 1962.

Case Background

- The customs broker was penalized ₹50 lakhs under Sections 112 and 114AA of the Customs Act, 1962, for allegedly abetting appellant and others in misusing the IEC of M/s Trip Communications Pvt. Ltd. (TCPL).
- The Department alleged that the broker knowingly facilitated the clearance of goods under a misrepresented IEC, violating Regulations 13(d) and (e) of the Customs House Agents Licensing Regulations, 2004.

Appellant's Submissions

Advocate, appearing for the customs broker, raised key legal defenses:

1. **No Evidence of Connivance:** There was no material evidence of active abetment or knowledge of misdeclaration by the broker.

2. **Tribunal's Previous Exoneration:** The Licensing Regulation-based suspension of the CHA license was earlier set aside in 2018 by CESTAT.
3. **IEC Lending Not an Offence:** Relied on the ruling, which held that lending IEC codes is not punishable under the Customs Act.
4. **Vagueness of SCN:** The show cause notice did not cite specific sub-sections of Section 112, making the imposition of penalty legally untenable.
5. **Inadmissible Confessional Statements:** Statements recorded under Section 108 of the Customs Act were not substantiated through mandatory procedures under Section 138B.

Tribunal's Observations

- **Mechanical Reproduction of Allegations:** The CESTAT noted that the adjudicating and appellate orders merely replicated the show cause notice allegations without fresh application of mind.
- **No Bar on Lending IEC:** Citing precedents, the Tribunal reiterated that lending IEC, while potentially problematic under FTP, is not a customs offence.
- **Penalty under Section 114AA Not Justified:** The Tribunal found no false or fraudulent documentation traceable to the appellant.
- **Violation of Section 112 Unsubstantiated:** The failure to specify the applicable sub-section weakened the legal validity of the penalty.
- **Improper Use of Section 108 Statements:** Reliance on statements without adherence to Section 138B procedure (examination and cross-examination) rendered them inadmissible.

Final Order

The CESTAT allowed the appeal and set aside the ₹50 lakh penalty, conclusively holding that:

"It cannot be said that the appellant contravened Regulation 13(d) & (e) or knowingly dealt with offending goods to attract penalty under Sections 112 and 114AA of the Customs Act."

Legal Significance

This judgment reinforces:

- The requirement of specific charges and evidence for penalties under customs law.
- The importance of procedural safeguards under Sections 108 and 138B.
- Recognition that customs brokers rely on documentation and cannot be made scapegoats for importer malfeasance unless connivance is clearly proven.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Delhi

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``CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 52332 OF 2019

(Arising out of Order-in-Appeal No. CC(A) CUS/D-I/ACC/IMP/NCH/227/2019 dated 31.05.2019 passed by the Commissioner of Customs (Imports), New Customs House, near IGI Airport, New Delhi)

M/s. GND Cargo Movers, **.....Appellant**
217, Peepal Apartments,
Sector – 17 – E, Dwarka,
New Delhi - 110078

VERSUS

Commissioner of Customs, (Import) **.....Respondent**
New Customs House,
Near IGI Airport, New Delhi - 110037

APPEARANCE:

Shri Faraz Anees, Advocate for the Appellant

Shri Rakesh Kumar, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 13.01.2025
DATE OF DECISION: 05.06.2025

FINAL ORDER NO. 50843/2025

JUSTICE DILIP GUPTA:

M/s. GND Cargo Movers[1] has sought quashing of the order dated 31.05.2019 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi[2] by which the order dated 18.05.2016 passed by the Additional Commissioner of Customs, ACC Import (Adjudication), New Delhi[3], imposing penalty of Rs. 50,00,000/- upon the appellant under sections 112 and 114AA Customs Act, 1962[4] has been upheld and the appeal has been dismissed.

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1. **the appellant**
2. **the Commissioner (Appeals)**
3. **the Additional Commissioner**
4. **the Customs Act**

2. The appellant as a holder of a customs broker license handled various custom clearance of import consignments of M/s. Trip Communications Pvt. Limited[5] at the instance of one Ashok Kumar Agarwal. These consignments were cleared by the officers of customs.

3. A show cause notice dated 20.05.2013 was issued to the appellant alleging violation of regulation 13 (d) and (e) of the Customs House Agents, Licensing Regulations, 2004[6] for a reason that the appellant accepted the IEC of an import firm mentioned by Ashok Kumar Agarwal knowing fully well that he was not a Director of Trips Communications. The show cause notice also alleges that the appellant abetted and dealt with goods which it knew or had reasons to believe were liable to confiscation under the Customs Act and, therefore, was liable to penalty under sections 112 and 114AA of the Customs Act. The relevant paragraph 13 of the show cause notice is reproduced below:

> "13. The CHA firm M/s. G.N.D. Cargo Movers (CHA No. ABRPN3905B CH001) have knowingly and deliberately abetted Shri Ashok Kumar Agarwal and his accomplices S/Shri Manoj Kumar Shukla, Amit Kumar and Tripurari Nath, for imports of the impugned goods in violation of the various provisions of the law as quoted above. **The CHA firm has failed in their obligation under Customs House Agents Licensing Regulations, 2004, particularly in regard to Regulation 13(d) & (e), of the said Rule which requires the CHA to advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs** or Assistant Commissioner of Custom and further 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

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5. Trip Communications
6. the Licensing Regulations

> or baggage. **In this case the CHA firm knowingly accepted IEC of import firm mentioned from Shri Ashok Kumar Agarwal and his accomplices knowingly fully well that he was not the director of M/s. TCPL and thereby abetted the act of mis-declaration of the bonafide of the importer and value of the imported goods by way of mis-declaration. The CHA firm have thereby abetted and dealt with goods which they knew or had reason to believe were liable to confiscation under the provisions of Section 111 and 119 of the Customs Act, 1962 and therefore they are liable to penalty under the provisions of Section 112 and 114AA of Customs Act, 1962.**"
>
> **(emphasis supplied)**

4. The Additional Commissioner, by the order dated 18.05.2016, imposed penalty of Rs. 50 lakhs upon the appellant under section 112 and section 114AA of the Customs Act. The relevant portion of paragraph 23 of the order is reproduced below:

> "23. ***** In this case the CHA firm knowingly accepted IEC of import firm mentioned from Shri Ashok Kumar Agarwal and his accomplices knowingly fully well that he was not the director of M/s. TCPL and thereby abetted the act of mis-declaration of the bonafide of the importer and value of the imported goods by way of mis-declaration. The CHA firm have thereby abetted and dealt with goods which they knew or had reason to believe were liable to confiscation under the provisions of section 111 and 119 of the Customs Act, 1962 and therefore they are liable for penal action under the provisions of Section 112 and 114AA of the Customs Act, 1962."

5. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) dismissed the appeal and upheld the order passed by the Additional Commissioner. The relevant portion passed by the Commissioner (Appeals) is reproduced below:

"5.1 I have carefully considered the facts of the case and the submissions, oral as well as written made on behalf of the Appellant, I find that the appellant have knowingly and deliberately abetted Shri Ashok Kumar Agarwal and his accomplices Shri Manoj Kumar Shukla, Amit Kumar and Tripurari Nath, for imports of the impugned goods in violation of the various provisions of the law as quoted above. **The Appellant has failed in their obligation under Customs House Agents Licensing Regulations, 2004, particularly in regard to Regulation 13(d) & (e), of the said Rule which requires the CHA to advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs** or Assistant Commissioner of Custom and further 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. **In this case the CHA firm knowingly accepted IEC of import firm mentioned from Shri Ashok Kumar Agarwal and his accomplices knowingly fully well that he was not the director of M/s. TCPL and thereby abetted the act of mis-declaration of the bonafide of the importer and value of the imported goods by way of mis-declaration. The CHA firm have thereby abetted and dealt with goods which they knew or had reason to believe were liable to confiscation under the provisions of Section 111 and 119 of the Customs Act, 1962. Further I find that the mistake stands admitted at the stage of investigation.** It warrants no further elaboration and accordingly, I hold the appellant liable to penalty under Section 112 and Section 114AA of the Customs Act, 1962."

(emphasis supplied)

6. It clearly transpires from the aforesaid that the order passed by the Additional Commissioner and the Commissioner (Appeals) are almost reproduction of the allegations made in the show cause notice.

7. Shri Faraz Anees, learned counsel for the appellant made the following submissions:

(i) The appellant cannot be held responsible for any misdemeanor of the importer and in this connection learned counsel has placed reliance upon the decisions of the Tribunal **D.S. Cargo Service** vs. **Commissioner of Customs, New Delhi**[7] and **Prime Forwarders** vs. **Commissioner of Customs, Kandla**[8];

(ii) In any view of the matter, proceedings initiated against the appellant under the provisions of the Licensing Regulations for revocation of license has been set aside by the Tribunal in the decision rendered on 31.08.2018 in Customs Appeal No. 50444 of 2017[9];

(iii) Lending of IEC is not an offence and in this connection learned counsel placed reliance upon the decision of the Tribunal in **Gopal Agarwal** vs. **Commissioner of Customs, New Delhi**[10];

(iv) No penalty can be imposed without specifying sub-section of section 112 of the Customs Act and in support of this contention learned counsel placed reliance upon the decisions of the Tribunal in **S.G. Steels** vs. **Commissioner of Customs, New Delhi**[11] and **Aadil Majeed Banday** vs. **Commissioner of Customs, Amritsar**[12]; and

(v) Penalty under section 114AA of the Customs Act has wrongly been levied on the appellant.

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7. 2009 (247) E.L.T. 769 (Tri. – Del.)
8. 2008 (222) E.L.T. 137 (Tri. – Ahmd.)
9. M/s. G.N.D. Cargo Movers vs. CC (General), New Delhi
10. 2015 (326) E.L.T. 593 (Tri. – Del.)
11. 2007 (215) E.L.T. 64 (Tri. – Del.)
12. 2021 (378) E.L.T. 540 (Tri. – Chan.)

8. Shri Rakesh Kumar, learned authorized representative appearing for the department, however, supported the findings recorded in the impugned order and made the following submissions:

(i) The appellant had violated the provisions of Licensing Regulations and IEC holder cannot sublet his IEC to other persons;

(ii) The appellant in self-confessional statements recorded under section 108 of the Customs Act stated the modus operandai and the said statement has not been retracted; and

(iii) The statements recorded before the customs officers are admissible.

9. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

10. In the first instance, it clearly transpires that the Additional Commissioner and the Commissioner (Appeals) have merely reproduced the allegations contained in the show cause notice for confirming the penalties imposed upon the appellant. It was incumbent upon the Additional Commissioner and the Commissioner (Appeals) to have independently examined the issues and record findings.

11. The order dated 30.01.2017 passed by the Commissioner in proceedings initiated under the provisions of the Licensing Regulations against the appellant was assailed by the appellant in Customs Appeal No. 50444 of 2017 and by a decision dated 31.08.2017 the order was set aside. It cannot, therefore, be said that the appellant contravened the provisions of regulation 13 (d) and (e) of the Licensing Regulations.

12. As a holder of custom broker license issued under the Licensing Regulations, the appellant merely acts on the basis of the documents provided by the importer. The department has imposed penalty on the appellant under section 114AA of the Customs Act for the reason that the appellant connived with the importer. In the absence of anything on record to show that the appellant connived with the importer, penalty under section 114AA of the Customs Act could not have been imposed upon the appellant.

13. This is what was observed by the Tribunal in **D.S. Cargo** and relevant portion of the decision is reproduced below:

> "7. We find that penalties were imposed under Section 114 of the Customs Act which provides that 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 for penalty. **In the present case, there is no material available on record that the appellants did anything or committed anything in connivance or with the knowledge of the exporter.** So, in the facts and circumstances of the case, in our view, the imposition of penalties under Section 114 of the Act are not warranted. We are not concerned with the case of the exporter. In any event, there is no material available that the CHA and his employee had any knowledge on the quality, quantity and value of the export goods."
>
> **(emphasis supplied)**

14. In **Prime Forwarders**, the Tribunal again observed:

> "10. **As regards, penalty on M/s. Prime Forwarders, customs house agent, no evidence of their involvement or their knowledge about mis-declaration has been brought on record.** The Commissioner has observed that being a responsible CHA, he should have informed the correct description of the goods. However, we find that the said CHA has acted on the basis of the

> documents given to them and there is nothing to show that he was aware of the containers being stuffed with Ferro Titanium instead of brass scrap. **As such we find no justification for imposition of penalty upon the said appellant.**"
>
> **(emphasis supplied)**

15. In the present case, both the Additional Commissioner and the Commissioner (Appeals) have held that the appellant accepted the IEC of a firm mentioned by Ashok Kumar Agarwal fully knowing that Ashok Kumar Agarwal was not the Director of Trip Communications. The Tribunal in **Gopal Agarwal** observed that since there is no bar under the Customs Act to import goods in the name of IEC holder and there is no offence under the Customs Act for lending IEC code, penalty cannot be imposed. The relevant portion of the order is reproduced below:

> "6. In this case, it is not in dispute that imports have been made in the name of IEC holder. **Bills of entries have also been filed in the name of IEC holder.** Therefore, as per the decision of Nazir-ur-rahman (supra), Imports have been made in the name of IEC holder. Further, the appellants has produced the IEC holder before the Revenue authorities and there is no bar for imports under the Customs Act to import the goods in the name of IEC holder and there is no offence under the Customs Act for lending of IEC code. In these circumstances, relying on the decision of Atul D. Sonpal (supra), I hold that the appellant has not violated the provisions of Customs Act and there is no allegation of any mis-declaration, misrepresentation or under-valuation of the goods, **Merely IEC holder lending the IEC to a third party is not an offence under the Customs Act and penalty for violation of Section 7 of Foreign Trade (Development and Regulation) Act, 1992 cannot be imposed under Customs Act.** Therefore I hold that penalty on the appellant is not imposable. Accordingly, the

> impugned order is set aside and appeal is allowed with consequential relief, if any."
>
> **(emphasis supplied)**

16. Penalty has also been imposed upon the appellant under section 112 of the Customs Act without specifying which particular sub-section of this section would be applicable.

17. Learned counsel for the appellant is justified in contending that specific sub-section has to be mentioned and even if section 112(b) of the Customs Act was to be invoked, penalty could be imposed only if the appellant was aware of the offending nature of the goods. In the present case there is nothing on the record to show that the appellant was aware of the nature of the imported goods. This is what was observed by the Tribunal in **S.G. Steels**. The relevant observations are as follows:

> "11. The contention of the learned Counsel appearing for the supplier M/s. Excellent Enterprises Pvt. Ltd. is that the appellant is a bona fide trader in metal scrap and in regard to the present goods, no offence has been committed by it. The appellant was not at all aware that the consignments contained any offending goods and therefore imposition of penalty on the appellant is entirely unwarranted. He would highlight that Section 112(b) alone could be invoked against the appellant and that sub-section allowed penalty only if the appellant was aware of the offending nature of the goods. The contention of the learned Counsel is that in the absence of any material to indicate that the appellant was aware of any offending goods in the consignments it sold, no penalty could be imposed. **The learned Counsel would also point out that the imposition of penalty under the impugned order is required to be vacated for the simple reason that the authority has not specified the sub-section of the Act which is being pressed against them. Reliance in this connection is being placed on the judgment of the Hon'ble Supreme Court in**

> **the case of Amrit Foods v. CCE, U.P. as reported in 2005 (190) E.L.T. 433 (S.C.).** The submission of the learned Counsel is that though this judgment was rendered in the context of penalty under Rule 173Q of the Central Excise Rules, the ruling contained therein would equally apply to imposition of penalty under Section 112 of the Customs Act.
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> *****
>
> 15. **It is also to be noted that in the absence of specific charges against the appellants in terms of specific sub-sections of Section 112, and also by imposing penalties under the relevant sub-section, authorities have rendered it difficult to understand the charge against each of the appellants.** The Hon'ble Supreme Court has strongly dis-approved of such generalized proceedings in the aforesaid judgment in the case of Amrit Foods."
>
> **(emphasis supplied)**

18. In **Aadil Majeed**, the Tribunal also observed as follows:

> "15. Further, on perusal of record, the show cause notice is vague as no particular provisions of Section 111 of the Customs Act for confiscation of the gold and no provisions of Section 112 of the Customs Act for imposing penalty has been brought on notice. Therefore, the show cause notice is also vague as held by the Hon'ble Apex Court in the case of Amrit Foods (supra). Further, in the case of Max G.B. Ltd. (supra), the Hon'ble Jurisdictional High Court had also held that the show cause notice is vague on specific violation is not sustainable."

19. Section 114AA of the Customs 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

Customs Act, shall be liable to a penalty not exceeding five times the value of goods.

20. The only allegation against the appellant is that the he was aware that the IEC was provided by Ashok Kumar Agarwal who was not the Director of Trip Communications. It has already been held that there is no bar in lending of IEC. Penalty under section 114AA of the Customs Act, therefore, could not have been imposed upon the appellant.

21. The contention advanced by the learned authorized representative appearing for the department that the IEC cannot be lent, therefore, is not correct.

22. The statements of Amit Kumar and Tripurari Nath and of the appellant made under section 108 of the Customs Act have been relied upon by the Commissioner (Appeals) for imposing penalty upon the appellant. Such statements could not have been relied upon as the procedure contemplated under section 138B of the Customs Act was not followed. This is what was held by the Tribunal in **M/s. Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[13]. The Tribunal examined the provisions of sections 108 and 138B of the Customs Act as also the provisions of sections 14 and 9D of the Central Excise Act, 1944 and observed as follows:

> "21. It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the

13. Excise Appeal No. 51148 of 2020 decided on 01.04.2025

> concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain."

23. After examining various judgments of the High Courts and the Tribunal, the Tribunal observed as follows:

> "28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central

> Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence."

24. Thus, for all the reasons stated above, the impugned order dated 31.05.2019 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **05.06.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya