



Aadrikaa Law Offices (ALO)- IDT Tax / Arbitration / Litigation

Date: 05.09.2025

CESTAT Delhi Sets Aside Penalties on Customs Broker in Misclassification



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

In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi, has set aside penalties imposed on M/s PS Bedi & Co (P) Ltd., a Customs Broker, under Sections 112(a)(ii) and 114AA of the Customs Act, 1962. This decision, delivered on August 5, 2025, highlights the importance of procedural fairness and the role of Customs Brokers in import transactions. The case revolved around alleged misclassification of imported goods, leading to penalties imposed by the Principal Commissioner of Customs.

Background of the Case

The appellant, M/s PS Bedi & Co (P) Ltd., was penalized for filing Bills of Entry for AMR/Non-AMR Water Flow Meters imported by M/s SPML India Ltd. from Israel. The Directorate of Revenue Intelligence (DRI) alleged that the goods were misclassified under Customs Tariff Item (CTI) 9026 10 10 instead of CTI 9028 20 00, resulting in revenue loss. Despite having Certificates of Origin indicating CTI 9028, the Customs Broker filed the Bills of Entry based on the import documents provided by the importer.

A show cause notice was issued, accusing the Customs Broker of deliberate misclassification and suppression of material facts, making the goods liable for confiscation under Section 111(m) of the Customs Act. Penalties were imposed under Sections 112(a)(ii) and 114AA of the Customs Act.

Key Arguments by the Appellant

1. **Reliance on Import Documents:** The Bills of Entry were filed based on the import documents provided by the importer, including invoices and packing lists.
2. **No Intentional Misclassification:** The Customs Broker cannot be held responsible for disputes regarding classification, as the assessing officer determines the correctness of classification.
3. **Procedural Fairness:** Proceedings under the Customs Brokers Licensing Regulations were initiated but later dropped, indicating no wrongdoing by the appellant.
4. **Absence of Evidence:** There was no evidence to suggest that the Customs Broker knowingly or intentionally made false declarations.

CESTAT's Observations and Decision

1. **Section 112(a)(ii):** The Tribunal noted that the Customs Broker filed the Bills of Entry based on the import documents provided by the importer, which described the goods as "Water Flow Meters." There was no evidence of deliberate misclassification or suppression of facts. Hence, the penalty under Section 112(a)(ii) was deemed unsustainable.
2. **Section 114AA:** The Tribunal emphasized that penalties under Section 114AA require evidence of knowingly or intentionally making false declarations. In this case, there was no proof of direct involvement or intent by the Customs Broker. Therefore, the penalty under Section 114AA was also set aside.

Implications of the Ruling

This decision underscores the importance of distinguishing between the responsibilities of Customs Brokers and importers in classification disputes. It reinforces the principle that penalties cannot be imposed without clear evidence of intent or direct involvement. The ruling also highlights the need for procedural fairness in adjudicating cases involving Customs Brokers.

Conclusion

The CESTAT's decision to set aside penalties on M/s PS Bedi & Co (P) Ltd. is a landmark judgment that provides clarity on the role and responsibilities of Customs Brokers. It serves as a reminder that penalties under the Customs Act must be backed by substantial evidence and cannot be imposed arbitrarily. This case will likely have far-reaching implications for similar disputes in the future, ensuring greater accountability and fairness in customs proceedings.

Source: CESTAT Delhi

Disclaimer

Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 | +91-9999005379

www.aadrikaalaw.com

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 50545 OF 2021

(Arising out of Order-in-Original No. 01/2021/MKSingh/Pr. Commr./ICD-Import/TKD dated 08.01.2021 passed by the Principal Commissioner of Customs (Import), ICD, Tughlakabad, New Delhi)

M/s PS Bedi & Co (P) Ltd.

D-14/1, Okhla Industrial Area,
Phase-1, New Delhi- 110020

.....Appellant

VERSUS

Commissioner Of Customs (Import)

ICD, Tughlakabad, New Delhi
110044

.....Respondent

APPEARANCE:

Dr. Prabhat Kumar and Shri Karan Kanwal, advocates for the appellant
Shri Shashi Kant Sharma, authorized representative of the department

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

**DATE OF HEARING: 17.03.2025
DATE OF DECISION: 05.08.2025**

FINAL ORDER NO. 51139/2025

JUSTICE DILIP GUPTA:

M/S PS Bedi & Co (P) Ltd.¹ a Customs Broker, has filed this appeal to assail the order dated 08.01.2021 passed by the Principal Commissioner of Customs in respect of the imports made from three ports namely, ICD Tughlakabad, New Delhi, Air Cargo Complex, New Customs House, New Delhi and JNCH Nhava Sheva, District Raigad, to the extent it imposes penalties upon the appellant under sections 112(a)(ii) and 114AA of the Customs Act, 1962².

2. The appellant was granted a Customs Broker License under the provisions of the Customs Brokers Licensing Regulations. It filed Bills

1. the appellant
2. the Customs Act

of Entries at the aforesaid three ports on behalf of M/S SPML India Ltd.³ for clearance of AMR/ Non-AMR Water Flow Meters⁴ imported from Arad Technologies Ltd., Israel. The AMR/Non-AMR Flow Meters were classified under Customs Tariff Item⁵ 9026 10 10 and all the Bills of Entries were accompanied by the requisite import documents like invoice, packing list, certificate of origin and Airway Bill. According to the appellant, the product was cleared by the customs without raising any objection regarding classification.

3. Directorate of Revenue Intelligence⁶, however, believed that the product was classifiable under CTI 9028 20 00 and so searches at various business premises of the importer were carried out and also statements of persons were also recorded.

4. Thereafter, a show cause notice dated 12.03.2020 was issued to the importer as also to the appellant. The appellant was called upon to show cause as to why penalty under sections 112 and 114AA of the Customs Act may not be imposed upon the appellant. The importer was also called upon to show cause as to why differential duty may not be demanded as the product was classifiable under CTI 9028 20 00 and was liable to confiscation.

5. The allegations made against the appellant in the show cause notice are as follows:

"18.2. The Customs Broker, M/s P S Bedi & Co. Pvt. Ltd, New Delhi (Noticee No. 3) is a well established Customs Broker Company having vast experience in the field of import and export. Sh. Satendra Singh Chauhan, Authorised signatory of Noticee No.3 in his statement

-
3. the Importer
 4. the Product
 5. CTI
 6. DRI

dated 14.02.2020 tendered under Section 108 of the Customs Act, 1962 has stated that though they were having certificate of origin which clearly mentioned CTH 9028, they have never raised any query to the Noticee Company or advised them to file the Bill of Entry under CTH 9028 2000 for the said water meters. He further stated that the entry of CTH 9028 made in the certificate of origin appears to have been missed by them as the said certificate was not a mandatory document. Besides, the Customs Broker has failed to appreciate the entries made in First Schedule of the Customs tariff relating to CTH 9028 which covers supply or production liquid meters. **From the import consignments i.e. commercial invoices, it was also clear that the import item i.e. AMR/Non-AMR water meters are meant for Delhi Jal Board which was also mentioned in the commercial invoice itself in foot notes. The Customs Broker made no enquiry with the Noticee Company to get clarification in the matter.** Also, another Customs Broker, M/s Shailendra Jain C&F Pvt Ltd., New Delhi of the Noticee Company who had got the import consignments of the Noticee Company cleared in the year 2012 had correctly classified the imported water meters, both AMR and Non-AMR under CTH 9028. **However, the identical bulk consignments of water meters were classified by the Noticee No.3 under CTH 9026 1010 in the year 2015 & 2016 under consideration.** The customs broker should have been very cautious in dealing with import consignments where huge revenue is involved or any exemption is being claimed by the importer by minutely scrutinising the import documents submitted by the Noticee Company. **By way of his conduct in indulging in wrong classification in connivance with the Noticee Company, the Customs broker (Noticee No. 3) had caused huge revenue loss to the government exchequer. In this way, the Noticee No. 3 has made him liable to penal**

action under Section 112 and Section 114AA of the Customs Act, 1962.”

(emphasis supplied)

6. The appellant filed a reply to the show cause notice and denied the allegations.

7. The Principal Commissioner recorded the following findings with regard to the appellant for imposing penalties under sections 112 and 114AA of the Customs Act:

“53. Sh. Satendra Singh Chauhan, Authorised signatory of Noticee No. 3 in his statement dated 14.02.2020 stated that though they were having certificate of origin which clearly mentioned CTH 9028, they have never raised any query to the Noticee Company or advised them to file the Bill of Entry under CTH 9028 made in the certificate of origin appears to have been missed by them as the said certificate was not a mandatory documents. Besides, the Customs Broker has failed to appreciate the entries made in First Schedule of the Customs tariff relating to CTH 9028 which covers supply or production liquid meters. **From the import consignments i.e. commercial invoices, it was also clear that the import item i.e. AMR/Non-AMR water meters are meant for Delhi Jal Board which was also mentioned in the commercial invoice itself in foot notes. The Customs Broker made no enquiry with the Noticee No. 1 to get clarification in the matter.** Also, another Customs Broker, M/s Shailendra Jain C&F Pvt Ltd., New Delhi got the import consignments of the Noticee No. 1 cleared in the year 2012 had correctly classified the imported water meters, both AMR and Non-AMR under CTH 9028. However, the identical bulk consignments of water meters were classified by the Noticee No. 3 under CTH 9026 1010 in the year 2015 & 2016 under consideration. **It was the obligation of the customs broker to properly scrutinise the import documents submitted by the importer.**

This clearly points to an active and willful involvement of the Noticee no. 3 in deliberate mis-declaration of the description of the imported goods and suppressing the material facts, which has rendered the said imported goods liable to confiscation under Section 111(m) of the Customs Act, 1962 and therefore for the said acts of omission and commission, the Noticee no. 3 are liable to penal action under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962."

(emphasis supplied)

8. It is the imposition of the two penalties under section 112(a)(ii) and section 114AA of the Customs Act that has been assailed in this appeal.

9. Dr. Prabhat Kumar, learned counsel for the appellant assisted by Shri Karan Kanwal made the following submissions:

- (i)** There is no justification for imposition of penalty on the appellant under sections 112 (a) (ii) and 114 of the Customs Act when proceedings can be taken against a customs broker under the provisions of the Customs Brokers Licensing Regulations and such proceedings were actually initiated but ultimately dropped by order dated 03.02.2021;
- (ii)** The Bills of Entries were filed on the basis of import documents provided by the importer;
- (iii)** The appellant cannot be held responsible for any dispute relating to confiscation;
- (iv)** An allegation of mis-declaration/suppression cannot be made by merely alleging that different classification was mentioned in the Bills of Entry for claiming benefit of Exemption Notification;

- (v) Goods are not liable to confiscation and, therefore, no penalties can be imposed;
- (vi) The description of goods in the import documents has been shown as "Water Flow Meters" and so the appellant cannot be faulted for describing the goods as "Water Flow Meters" in the Bills of Entry; and
- (vii) The correctness of the classification declared in the Bills of Entry has to be determined by the assessing officer.

10. Shri Shashi Kant Sharma, learned authorized representative appearing for the department has, however, supported the imposition of penalties upon the appellant. Learned authorized representative submitted that the appellant, as a customs broker appointed by the importer, was responsible for filing the Bills of Entry and despite having the Certificates of Origin and Product Catalogues which indicated classification under Customs Tariff Heading 9028, the appellant did not verify or question the classification by the importer. Thus, the goods became liable to confiscation under section 111(m) of the Customs Act and so penalties were correctly levied on the appellant.

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

12. The first issue that arises for consideration is whether penalty under section 112(a)(ii) of the Customs Act could have been imposed upon the appellant. Section 112 of the Customs Act deals with penalty for improper importation of goods and the relevant portion of the section is reproduced below:

“112. Penalty for improper importation of goods etc.

Any person,-

(a) 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 111, or abets the doing or omission of such an act, or

(b) ****

(c) ****

Shall be liable to-

(i) ****

(ii) In the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher:

PROVIDED that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined.

(iii) ****

(iv) ****

(v) ****”

13. Thus, if 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 111, or abets the doing or omission of such an act shall be liable to a penalty not exceeding 10% of the duty sought to be evaded or Rs. 5000/- whichever is higher. The reason recorded by the Principal Commissioner for imposing penalty under section 112(a)(ii) of the Customs Act is that it was the obligation of the Customs Broker to properly scrutinize the import documents submitted by the importer and in the present case the Customs Broker was actively involved in deliberate mis-

declaration of the description of the imported goods which rendered the imported goods liable to confiscation under section 111(m) of the Customs Act and, therefore, penalty was leviable upon the appellant under section 112(a)(ii) of the Customs Act.

14. It is seen that the description of the goods in the import documents was shown as "Water Flow Meters" and, therefore, the appellant cannot be faulted for describing the goods as "Water Flow Meters" in the Bills of Entry. The Bills of Entries were filed on the basis of the import documents provided by the importer and the appellant cannot be held responsible for any alleged mis-declaration. There was no reason for the appellant to seek any clarification since the documents did describe the product. It also needs to be noted that there is nothing on the record to substantiate that the Customs Broker was made aware of the earlier consignments. In such circumstances, the imposition of penalty on the appellant under section 112(a)(ii) cannot be sustained.

15. The next issue that arises for consideration is whether penalty could have been imposed upon the appellant under section 114AA of the Customs Act.

16. 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, shall be liable to a penalty not exceeding five times for the value of the goods. The appellant has not signed or used or made any declaration which is false or incorrect in any material particular nor is there any evidence to suggest that this was done knowingly or intentionally. In the

absence of direct involvement of the Customs Broker, penalty under section 114AA of the Customs Act cannot be imposed.

17. Thus, for reasons stated above, the penalty imposed upon the appellant under section 112(a)(ii) and section 114AA of the Customs Act is liable to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **05.08.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R.PRIYA)
MEMBER (TECHNICAL)

Kritika