



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

**Date: 23.09.2025**

### **CESTAT Kolkata Overturns Rs. 1.5 Crore Penalty on Freight Forwarder**



*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](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

In a landmark decision, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Kolkata, has set aside penalties totaling Rs. 1.5 crore imposed on Appellant, a freight forwarder, under Sections 112(a)(i), 112(b)(i), and 114AA of the Customs Act, 1962. This judgment not only provides relief to Appellant but also sets a precedent for freight forwarders and other peripheral service providers in the logistics industry.

#### **Background of the Case**

The case revolved around allegations of mis-declaration of imported goods in three consignments. Appellant, the Director of M/s. NAF Logistics Private Limited (NLPL), was accused of acting as both the overseas supplier and the freight forwarder, thereby allegedly assisting in the mis-declaration. The Principal Commissioner of Customs (Airport & ACC), Kolkata, imposed penalties of Rs. 50,00,000/- each under Sections 112(a), 112(b), and 114AA of the Customs Act, 1962, totaling Rs. 1.5 crore.

Aggrieved by the order, Appellant filed an appeal before the CESTAT, Kolkata, challenging the penalties.

## Key Findings of the Tribunal

After a detailed examination of the case, the Tribunal made several critical observations:

1. **Limited Role of the Freight Forwarder:** The Tribunal found that Appellant's role was limited to acting as the Indian counterpart of the overseas carrier. He was neither the supplier, nor the carrier, nor the importer, nor the Customs House Agent (CHA). His job was merely collecting the delivery order from the airline and passing it on to the consignee/importer. There was no evidence to suggest that he had any connection with the procurement, shipment, importation, or clearance of the goods.
2. **Resignation from Overseas Supplier:** Documentary evidence submitted by Appellant showed that he and his mother had resigned as directors of the overseas supplier, M/s. Zhenda Foreign Trade HK Limited, effective 01 March 2017. The alleged imports took place between June and August 2017, well after their resignation. The Tribunal held that Appellant could not be held responsible for the affairs of the overseas supplier during the relevant period.
3. **Lack of Evidence:** The Tribunal noted that the Revenue failed to provide any corroborative evidence to support the allegations against Appellant. The claim that remittances were received through channels other than banking was found to be based on assumptions and presumptions.
4. **Applicability of Penal Provisions:** The Tribunal observed that the penal provisions under Sections 112(a), 112(b), and 114AA of the Customs Act, 1962, could not be applied to activities alleged to have occurred in a foreign territory. Furthermore, Section 114AA was deemed inapplicable as it pertains to export benefits and not importation.
5. **Proportionality of Penalty:** The Tribunal highlighted the disproportionate nature of the penalty imposed on Appellant compared to the alleged mastermind, Proprietor of M/s. Sri Ram Traders, who was penalized with a lesser amount. It emphasized that penalties should be proportionate to the nature of the offense and the role of the person involved.

## Final Verdict

The Tribunal set aside the penalties imposed on Appellant, stating that there was no evidence to establish his involvement in the alleged mis-declaration. It held that the penalties were legally unsustainable and allowed the appeal with consequential relief.

## Implications of the Judgment

This judgment is a significant win for freight forwarders and other service providers in the logistics industry. It underscores the importance of distinguishing between the roles of peripheral service providers and the actual entities involved in import/export transactions. The Tribunal's decision also reinforces the principle that penalties must be proportionate and supported by concrete evidence.

## Conclusion

The CESTAT Kolkata's decision in favor of Appellant is a reminder that justice prevails when facts are thoroughly examined and assumptions are set aside. This case serves as a beacon of hope for individuals and businesses facing unwarranted penalties in similar circumstances. Freight forwarders can now breathe a sigh of relief, knowing that their limited role in logistics operations cannot be unfairly penalized without substantial evidence.

**Source: CESTAT Kolkata**

**Disclaimer**

Write to us at [office@aadrikaalaw.com](mailto:office@aadrikaalaw.com)

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

[www.aadrikaalaw.com](http://www.aadrikaalaw.com)

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

REGIONAL BENCH – COURT NO. 2

**Customs Appeal No. 75555 of 2022**

(Arising out of Order-in-Original No. KOL/CUS/Pr.COMMISSIONER/AP/ADMN/09/2022 dated 31.03.2022 passed by the Principal Commissioner of Customs (Airport & ACC), 15/1, Strand Road, Kolkata – 700 001)

**Arnab Sinha**

20, Netaji Subhas Road,  
1<sup>st</sup> Floor, Block-A,  
Kolkata – 700 001

**: Appellant**

**VERSUS**

**Principal Commissioner of Customs (Airport & ACC) : Respondent**

Custom House, 15/1, Strand Road,  
Kolkata – 700 001

**APPEARANCE:**

Shri Arvind Baheti, Chartered Accountant, for the Appellant

Shri Tariq Sulaiman, Authorized Representative, for the Respondent

**CORAM:**

**HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 77443 / 2025**

DATE OF HEARING: 17.09.2025

DATE OF DECISION: 19.09.2025

**ORDER: [PER SHRI K. ANPAZHAKAN]**

The present appeal has been filed against the imposition of penalties of Rs.50,00,000/- each under Sections 112(a)(i), 112(b)(i) and 114AA of the Customs Act, 1962, totally amounting to Rs.1,50,00,000/- vide the Order-in-Original No. KOL/CUS/Pr.COMMISSIONER/AP/ADMN/09/2022 dated 31.03.2022 passed by the Ld. Principal Commissioner of Customs (Airport & ACC), 15/1, Strand Road, Kolkata – 700 001.

2. The facts of the case are that intelligence was developed that certain courier firms were engaged in the unscrupulous activity of importing high value counterfeit items/contraband items in the guise of household goods by resorting to mis-declaration in connivance with customs officers. Based on such intelligence, investigations were initiated by DRI against the importer, the Customs House Agent ("CHA"), Customs Officers and some other parties (hereinafter referred to as the "co-noticees") who were believed to be assisting the illegal import. During the course of investigation, summons were issued and statements were recorded from various persons.

3. Mr. Arnab Sinha (hereinafter referred to as the "appellant"), one of the Co-Noticee, is the Director of M/s. NAF Logistics Private Limited ("NLPL" for short). During the relevant period, NLPL was engaged as the freight forwarder for certain consignments imported by one Mr. Sushil Kumar Singh, Proprietor of Sri Ram Traders (hereinafter referred to as the "importer"). Mr. Arnab Sinha and his mother, namely, Smt. Mohua Sinha were also the Directors of M/s. Zhenda Foreign Trade HK Limited ("ZFTL/overseas supplier").

4. During the course of investigations conducted, the premises of the appellant was searched on 23<sup>rd</sup> October, 2017 and statements of the appellant were also recorded.

5. Upon completion of the investigation, a Show Cause Notice dated 04.12.2017 was issued, proposing confiscation of the goods imported under Bill of Entry No. 9948788 dated 03.06.2017, Bill of Entry No. 9948804 dated 03.06.2017 and Air Way Bill No. 21715543404 dated 05.06.2017 and also proposing penalties, inter alia, on the appellant herein.

6. Upon adjudication, penalties of Rs.50,00,000/- each under Sections 112(a)(i), 112(b)(i) and 114AA of the Act, totally amounting to Rs.1,50,00,000/-, has been imposed on the appellant vide the impugned order dated 31.03.2022.

6. Aggrieved by the imposition of penalties on him, the appellant has filed the instant appeal.

7. It has been submitted by the appellant that he had been appointed as the freight forwarder in respect of the following three consignments: -

<b>Sl. No.</b>	<b>Airway Bill Number and Date</b>	<b>Bill of Entry Number and Date</b>	<b>Declared Goods</b>	<b>Name of the Supplier</b>
1	16083695684 dated 03 June 2017	9948788 dated 03 June 2017	Mobile accessories/Hand s free tampered glass/Housing/LC D	ZFTL
2	17654035881 dated 01 June 2017	9948804 dated 03 June 2017	Shoes	ZFTL
3	21715543404 dated 05 June 2017	No BOE has been filed against the said Airway Bill	Electronic Parts	ZFTL

8. The primary allegations against the appellant are that he has acted both as the overseas supplier and the freight forwarder for the imports and thus has provided active assistance in the alleged mis-declaration. It is the case of Revenue that the overseas supplier had no FOREX Account and as such the remittances towards the alleged imports were being received by the appellant through channels other than banking channels.

9. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant has made various submissions in support of his contentions, which can be broadly summarized as under: -

**A. The entire case against the appellant has been framed solely on the basis of the statements of appellant and other co-noticees, which holds no evidentiary value, as the procedure prescribed under Section 138B of the Customs Act have not been complied with and even the opportunity of cross-examination has been denied to the appellant.**

(i) At the outset, the appellant submits that it is an admitted position in the notice that nothing incriminating was found from the premises of the appellant during the investigation. Thus, the entire case of the Revenue against the appellant is based solely upon statements of the appellant and co-noticees, without any corroborative cogent evidence. It is a settled law that such statements, in absence of any corroborative evidence, cannot form the sole basis for convicting the appellant as held by this Tribunal in the case of ***Suresh Maruti Patil Vs. Commissioner of Customs (Preventive), Kolkata [2025 (5) TMI 663]***. Moreover, the retracted statements of the Appellant having been obtained by the Department under duress and coercion do not hold any evidentiary value and as such cannot be relied. Reliance in this regard is placed on the judgement of Hon'ble Delhi High Court in the case of ***Directorate of Revenue Intelligence Vs. Moni [2010 (252) E.L.T. 57]*** and the decision of the Tribunal in

the case of ***Jeen Bhavani International Vs. Commissioner [(2023) 6 Centax 11 (Tri. – Mum)] [Affirmed in SC – (2023) 6 Centax 14]***.

- (ii) Even otherwise, the statements relied upon by the Ld. adjudicating authority holds no evidentiary value as the procedure prescribed under Section 138B of the Customs Act have not been complied with. It is a settled law that statement of witness recorded under Section 108 of Customs Act, 1962 cannot be admitted as evidence unless the person making the statement is first examined as a witness before the adjudicating authority and thereafter subjected to cross-examination. The use of the word "shall" in Section 138B(1), makes it clear that the procedural requirements under Section 138B are not merely directory but mandatory in nature. In the absence of compliance of procedure required under Section 138B of the Customs Act, such statements does not constitute relevant or admissible evidence and hence cannot be relied upon to demand penalty from the appellant. Reliance in this regard is placed on the judgement of the Principal Bench of the Tribunal in the case of ***M/s. Surya Wires Private Limited Vs. Principal Commissioner, CGST, Raipur [2025 (4) TMI 441]*** and the decision of the Tribunal, Chandigarh in the case of ***M/s. Ad Adhesive Industries Vs. Commissioner of Customs, Delhi – IV [2025 (7) TMI 1554]***.

- (iii) Moreover, the opportunity of cross-examination of the other co-noticees has also been denied to the appellant by the Ld. adjudicating authority on the purported ground that allowing cross examination is not mandatory under the Customs Law. The appellant submits that it is a settled position in law that when the statements recorded from the co-accused are the only evidence to implicate another person in an offence, then the said statements cannot be relied upon against such person (appellant) without giving an opportunity for cross-examining the persons who have given the statements implicating the appellant. Reliance in this regard is placed on the judgement of the CESTAT, Kolkata in the case of ***Shri Gagan Karel Vs. Commissioner of Customs (Preventive), Kolkata [2025 (1) TMI 1104]***.

**B. Appellant is neither the importer nor the mastermind to whom the importer had allegedly lent its IEC. The appellant only acted as freight forwarders and had no role in the alleged mis-declaration of the imported consignments.**

- (i) The appellant and his mother were the directors of the overseas supplier till 01 March 2017 after which they resigned from the said directorship. The alleged exports, on the other hand, were made during the period 05 June 2017 to 01 August 2017. The Appellant was neither the supplier, nor the carrier, nor the importer, nor the CHA in respect of the impugned import

consignments. The actual entities involved in the said transactions are as under:

- i. Supplier – M/s. Zhenda Foreign Trade HK Limited
- ii. Carrier on export side – Ship Air Express (HK Limited)
- iii. Importer – Mr. Sushil Kumar Singh and Badshah (alleged actual importer)
- iv. Customs House Agent (CHA) – M/s. Sadguru Forwarders Pvt. Ltd represented by Shri Alope Ghosh

(ii) The role of the appellant was limited solely to acting as the Indian counterpart of the overseas carrier and nothing beyond. The Appellant had no connection whatsoever with the procurement, shipment, importation, or clearance of the goods in question. Therefore, during the relevant period, the appellant was neither responsible nor associated with the state of affairs of the overseas supplier and hence no *malafide* can be attributed to the Appellant for the impugned consignments.

(iii) In so far as the allegation of receipt of remittances by the overseas supplier through channels other than banking is concerned, the appellant submits that being completely unaware of the affairs of the company for the said period, non-receipt of proceeds through formal banking channels cannot be attributed to the appellant in absence of any corroborative evidence. Further, during the period the appellant was the Director of the overseas supplier, there was an active bank account in

the name of ZFTL. Therefore, the allegation of receipt of remittance through other than banking channels under the directorship of the Appellant is totally based on assumptions and presumptions.

- (iv) The appellant, for the services rendered in the capacity of a freight forwarder, has raised valid invoices upon the importer for the freight forwarding services and has received payments for the same. The same can be cross verified from the corresponding entries in the bank statements of the importer. Similarly, invoices raised upon the appellant were only for freight charges. The Airway Bill corresponding to such invoices conspicuously showed that the Appellant was not the consignee of the said goods and as such there could be no question of the appellant using someone else's IEC.
- (v) Further, the appellant did not stand to gain anything from the alleged mis-declaration. The Department has failed to establish the receipt of any amount received by the appellant which was received by the appellant except for the freight forwarding charges. The contention of the department that the amount was received by the appellant through other than banking channels is entirely based upon assumptions and presumptions without any cogent evidence and as such the same is not sustainable in the eyes of law. Reliance in this regard is placed on the judgement of the Tribunal in the case of ***Commissioner of C. Ex. & ST Vs. Mahavir***

***Enterprises [2017 (355) E.L.T. 297 (Tri. – Hyd.)].***

**C. Penalties imposed under the various provisions of the Customs Act are wholly unwarranted in so far as the provisions of Section 112(a), 112(b) and 114AA are mutually exclusive. In any event, penalty u/s 114AA can only be imposed in cases of exportation and not in cases of importation.**

- (i) The appellant's job was merely to collect the delivery order from the airline and pass it on to the Consignee/Importer. He was not and could not be expected to be aware about the contents of the packages. Further, the appellant did not have any direct communication with the customs officers or the other alleged perpetrators of the modus operandi as evident from the call records produced in the impugned notice. In these circumstances, the appellant cannot be said to have abetted any act or omission rendering the goods liable to confiscation [Section 112(a)], nor can it be alleged that he knew or had reasons to believe that the imported goods were liable for confiscation [Section 112(b)]. Consequently, the imposition of penalty under Section 112 of the Customs Act, 1962 is wholly unwarranted and bad in law. Reliance in this regard is being placed on the judgement of the Tribunal in the case of ***Vaz Forwarding Limited Vs. Commissioner of Customs, Calcutta [2000 (118) E.L.T. 724 (Tri. Cal.)].***

- (ii) In any event, the provisions of Section 112(a) and Section 112(b) are mutually exclusive and cannot be applied simultaneously as held by the Tribunal in the case of **Ashok T. Sadrangani Vs. Commissioner of Customs (Preventive), Mumbai [2018 (363) E.L.T. 889]**. Similarly, the provisions of Section 114AA and Section 112(a) are also mutually exclusive and cannot be applied simultaneously. Reliance in this regard is placed on the judgement of the Tribunal in the case of **S.M. TaufEEK Vs. Commissioner of Customs, Chennai – IV [2017 (358) E.L.T. 326 (Tri. – Chennai)]**.
- (iii) Further, the appellant submits that penalty under Section 114AA is imposable only in those situations where export benefits are claimed without exporting the goods and by presenting forged documents and not in cases of importation. The same has been echoed in the judgment of this Tribunal in case of **M/s. Gainwell Commosales Private Limited Versus Commissioner of Customs (Import-I), Mumbai [2025 (8) TMI 1483 - CESTAT KOLKATA]** and in the case of **Access World Wide Cargo Vs. Commissioner of Customs, Bangalore [2022 (379) E.L.T. 120]**.
- (iv) In any event, penalty under Section 114AA can be imposed only upon a person who 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 for the purpose of the Customs Act. In this regard, the

appellant submits that his role was limited to filing the Airway Bill and to issue the delivery order received from the airline to the importer. Such an airway bill is not a document filed under the Customs Act. As such penalty under Section 114AA cannot be imposed on the appellant. Reliance in this regard is being placed on the judgement of the Tribunal, Delhi in the case of **Mayank Gupta Vs. Commissioner of Customs (Export), New Delhi [(2024) 25 Centax 383]**.

- (v) The Ld. adjudicating authority has observed that the appellant introduced Sahanshah Mallick (alleged actual importer of one of the consignments) to Mr. Sushil Kumar Singh and thus provided active assistance in the mis-declaration. However, it is contended by the appellant that merely because of the aforesaid, it cannot automatically lead to the allegation that the appellant has connived to mis-declare the goods imported. Reliance in this regard is placed on the judgement of the Tribunal, Kolkata in the case of **Sajal Das Vs. Commissioner of Customs, Airport & Air Cargo Complex Commissionerate [Final Order No. 76182 of 2025]**.
- (vi) Further, it is an admitted position in the impugned order itself that the invoices and packing lists were signed by Mr. Hertman Kong on behalf of the overseas supplier who was not authorized by the Appellant. Therefore, the appellant had no nexus with such alleged imports whatsoever. Even otherwise, it is an

admitted position in the impugned order that the overseas supplier was unaware about the goods and issued invoices based on the terms dictated by the importer. As such no mens rea can be attributed to the appellant. It has been settled by a number of judgements of the Tribunal that penalty under Sections 112 and 114AA cannot be imposed in absence of malafide on the part of the appellant, such as in:

- *P.N. Shipping Agency Vs. Commissioner of Customs, Nhava Sheva – I [2019 (369) E.L.T. 1560 (Tri. – Mum.) ]*
- *Commissioner of Customs Vs. Trinetra Impex Private Limited [2020 (372) E.L.T. 332 (Del.)]*

**D. The appellant cannot be assumed to be the Beneficial Owner of the consignment imported vide AWB No. 21715543404 dated 05 June 2017**

- (i) It is submitted that the impugned notice itself states that the consignee/buyer for the said consignments was Sri Ram Traders. Therefore, the observation of the Ld. adjudicating authority that the appellant was the beneficial owner of the said imports is wholly arbitrary and unsustainable. Such an observation has been rendered against the appellant merely on the basis of assumptions and presumptions. Reliance in this regard is placed on the judgement of the Hon'ble Madras High Court in the case of ***C. Solomon Selvaraj Vs. Principal Commissioner of Customs [(2023) 13 Centax 118]***.

- (ii) Even assuming, though without admitting that the appellant is the beneficial owner of the said goods, mis-declaration cannot be alleged upon the appellant as no Bill of Entry has been filed with respect to the said consignments. Further, there has been no violation of the provisions of Section 46 of the Customs Act, as it requires the importer to file a Bill of Entry for the purpose of importation.
- (iii) In any event, it is his case that the impugned notice did not even allege that the appellant was the beneficial owner of the impugned consignments. The impugned notice primarily proceeded on the premise that the appellant provided active assistance in the alleged mis-declaration. Therefore, the Ld. adjudicating authority has travelled beyond the scope of show cause notice. It is a settled principle in law that an adjudication order cannot travel beyond the scope of Show Cause Notice. Reliance in this regard is placed on the judgement of the Tribunal in the case of ***Manjit Singh vs. Commissioner of Customs (Import), Nhava Sena [2015 (323) E.L.T. 377 (Tri – Mum)]***.

**E. Quantum of penalty imposed upon the appellant is excessive and disproportionate vis-à-vis the offence alleged. Moreso, when the importer and the alleged mastermind Mr. Sushil Kumar Singh have been imposed with a lesser penalty than the appellant**

- (i) The appellant submits that the alleged principal offender, Shri Sushil Kumar Singh, proprietor of the IEC lending firm Sri Ram Traders who is alleged to have been the mastermind of the entire transaction has been imposed with a penalty of only Rs. 1,00,00,000/- [Rs. 60,00,000/- on Shri Sushil Kr. Singh u/s 112(a) and 112(b) and Rs. 40,00,000/- on Sri Ram Traders under Section 114AA]. Whereas, the Appellant, who is merely a freight forwarder engaged to facilitate the import consignments, has been saddled with an exorbitant penalty of Rs.1,50,00,000/-, i.e., Rs.50,00,000/- each under Sections 112(a), 112(b), and 114AA of the Customs Act, 1962. This arbitrary distinction between the treatment of the alleged mastermind and a peripheral service provider highlights the disproportionate nature of the penalty imposed upon the appellant.
- (ii) It is a settled principle that penalty should be proportionate to both the nature of the offence and the role of the person in its commission. The Hon'ble Supreme Court in the case of ***Hindustan Steel Ltd. v. State of Orissa [1978 (2) E.L.T. (J 159)]*** held that penalty is not to be imposed merely because it is lawful to do so, but only when the conduct of the person is deliberate, contumacious, or with knowledge of violation. Applying this principle, the appellant, who had no role in planning or executing the alleged modus operandi and acted only as a freight forwarder, cannot justifiably be subjected to a penalty that is fifteen times higher than that imposed on the alleged

mastermind. Such imposition is not only excessive but also contrary to the doctrine of proportionality. Reliance in this regard is placed on the judgement of Hon'ble Delhi High Court in the case of ***M/s. ECG Easy Connect Logistics Pvt. Ltd. Versus Commissioner of Customs [2025 (8) TMI 1573 - DELHI HIGH COURT]***.

- (iii) Thus, even if it assumed but not admitted that the appellant had the knowledge of the goods and abetted in mis-declaration of the same, the penalty imposed cannot be more than the penalty upon the alleged principal offender. Hence, the penalty upon the appellant deserves to be set aside, or at the very least, reduced substantially.

9.1. In view of the above submissions, the Ld. Counsel for the appellant prays for dropping the penalties imposed on the appellant vide the impugned order.

10. On the other hand, the Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned order. He submitted that the appellant and his mother have actually submitted their resignation only on 23<sup>rd</sup> October, 2017. Thus, it is his submission that the appellant was in charge of the affairs of the overseas supplier during the period when the imports took place. Accordingly, he prays for upholding the order of imposition of penalties on the appellant.

11. Heard both sides and perused the appeal records.

12. We observe that the appellant was the Director of the Freight Forwarding company, M/s. NAF Logistics Private Limited (NLPL). During the relevant period, NLPL was engaged as the freight forwarder for certain consignments imported by one Mr. Sushil Kumar Singh, Proprietor of Sri Ram Traders. The primary allegations against the appellant are that he has acted both as the overseas supplier and the freight forwarder for the imports and thus has provided active assistance in the alleged mis-declaration of the goods imported vide three consignments as mentioned in paragraph 7 (supra). On the basis of the above, penalties of Rs.50,00,000/- each have been imposed on the appellant, under Sections 112(a)(i), 112(b)(i) and 114AA of the Customs Act, 1962. The appellant is contesting these penalties imposed on him.

12.1. It is seen that the issue of mis-declaration alleged in the impugned order is related to three consignments in respect of which the appellant has acted as the freight forwarders. We find that in respect of these three consignments, the appellant was neither the supplier, nor the carrier, nor the importer, nor the CHA. The actual entities involved in the said transactions are as under:

- i. Supplier – M/s. Zhenda Foreign Trade HK Limited
- ii. Carrier on export side – Ship Air Express (HK Limited)
- iii. Importer – Mr. Sushil Kumar Singh and Badshah (alleged actual importer)
- iv. Customs House Agent (CHA) – M/s. Sadguru Forwarders Pvt. Ltd represented by Shri Aloke Ghosh

12.2. As per the voluntary statements of Mr. Sushil Kumar Singh, Proprietor of M/s. Sri Ram Traders, recorded on 28.06.2017, 25.07.2017 and 11.09.2017, the consignment under the Bill of Entry No. 9948788 dated 03.06.2017 was imported using his IEC and that these goods were actually imported by Badshah. He also inter alia stated that the goods imported under Bill of Entry No. 9948804 dated 03.06.2017 were actually brought by Navneet Kumar, DC; if there is any duty liability on these consignments, the duty is to be paid by the actual importers. We observe that it has also been admitted by Mr. Sunil Kumar Singh in his statements that he had lent his IEC to Badshah and Navneet Kumar for easy money. Thus, the statements of Mr. Sushil Kumar Singh clearly indicate that the goods mentioned in the said two Bills of Entry were not imported by the appellant, Mr. Arnab Sinha.

12.2.1. Further, in respect of the third consignment under Airway Bill No. 21715543404, Shri Sunil Kumar Singh has stated that the same were "in the name of his firm Sri Ram Traders".

12.3. Thus, from the above, it is evident that the appellant herein had nothing to do with the goods imported in the above said consignments.

12.4. We find that the role of the appellant as a Freight Forwarder was limited solely to acting as the Indian counterpart of the overseas carrier and nothing beyond. The appellant had no connection whatsoever with the procurement, shipment, importation, or clearance of the goods in question. In the impugned order, it has been alleged that the appellant and his mother were the directors of the overseas supplier till 23<sup>rd</sup> October 2017 and hence they assisted the

alleged mis-declaration of the goods imported in the said three consignments. In this regard, we take note of the submission made by the appellant that he and his mother had resigned from the said directorship w.e.f. 01<sup>st</sup> March 2017 while the alleged exports were made during the period 05<sup>th</sup> June 2017 to 01<sup>st</sup> August 2017. Thus, it is the submission of the appellant that during the relevant period, he was neither responsible nor associated with the state of affairs of the overseas supplier and hence no *mala fide* can be attributed to the appellant for the impugned consignments.

12.5. We have perused the documentary evidences submitted by the appellant in support of the above claim. For ready reference, copies of the said documents are extracted below:

▪ **Resignation of Mr. Arnab Sinha w.e.f. 01.03.2017:**

(存案 Filed)

**更改公司秘書及董事通知書(委任/停任)**  
**Notice of Change of Company Secretary and Director (Appointment/Cessation)**

表格 Form **ND2A**  
 公司編號 Company Number  
 1663953

1 公司名稱 Company Name  
**ZHENDA FOREIGN TRADE (HK) LIMITED**

2 公司秘書/董事的停任 Cessation to Act as Company Secretary/Director  
(如超過一名公司秘書/董事停任，請用表格A填寫 Use Continuation Sheet A if more than 1 company secretary/director ceased to act)

A. 現時在公司註冊處登記的詳情 Particulars Currently Registered with the Companies Registry  
請在適用的表格內加上✓號 Please tick the relevant box(es)

身分 Capacity  公司秘書 Company Secretary  董事 Director  候補董事 Alternate Director

代替 Alternate to (Nil)

公司秘書/董事的詳情(自然人) Particulars of Company Secretary/Director (Natural Person)

中文姓名 Name In Chinese (Nil)  
 英文姓名 Name In English 姓氏 Surname: **SNHIA**  
 名字 Other Names: **Arnab**

身分證明 Identification 香港身分證號碼 Hong Kong Identity Card Number: (Nil) 護照號碼 Passport Number: **J9593129**

或 OR

公司秘書/董事的詳情(法人團體) Particulars of Company Secretary/Director (Body Corporate)  
 中文及英文名稱 Chinese and English Names: (Nil)

B. 停任詳情 Details of Cessation

停任原因 Reason for Cessation  辭職/其他 Resignation/Others  去世 Deceased

停任日期 Date of Cessation 日 DD: **01** 月 MM: **03** 年 YYYY: **2017**

上述董事或候補董事在停任日期後，是否仍繼續擔任該公司的候補董事或董事職位?  是 Yes  否 No

提交人資料 Presenter's Reference  
 姓名 Name: **RIGHT POINT ACCOUNTANCY LIMITED**  
 地址 Address: **Rooms 1506-1508, 15/F., Laws Commercial Plaza, 788 Cheung Sha Wan Road, Kowloon Hong Kong**  
 電話 Tel: **2332 3509** 傳真 Fax: **2770 8515**  
 電郵 Email: **info@rightpointcpa.com**  
 權號 Reference: **36150025, Our Ref. KC3615/11**

請勿填寫本欄 For Official Use  
 RECEIVED  
 收件日期 23 OCT 2017  
 22701596189  
 ND2A  
 23/10/2017  
 1663953

0078

▪ **Resignation of Smt. Mohua Sinha w.e.f. 01.03.2017:**

續頁 A Continuation Sheet A

公司編號 Company Number

1663953

公司秘書/董事的停任 (第 2 項)  
Cessation to Act as Company Secretary/Director (Section 2)

412

A. 現時在公司註冊處登記的詳情 Particulars Currently Registered with the Companies Registry  
請在適用的空格內加上 ✓ 號 Please tick the relevant box(es)

身分 Capacity	<input type="checkbox"/> 公司秘書 Company Secretary	<input checked="" type="checkbox"/> 董事 Director	<input type="checkbox"/> 候補董事 Alternate Director	代替 Alternate to
				(Nil)

公司秘書/董事的詳情(自然人) Particulars of Company Secretary/Director (Natural Person)

中文姓名 Name in Chinese (Nil)

英文姓名 姓氏 Surname Name in English SINHA

名字 Other Names Mohua

身分證明 Identification	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (Nil)	香港身分證號碼 Hong Kong Identity Card Number	<input type="checkbox"/> M0684164	護照號碼 Passport Number
------------------------	--	---	-----------------------------------	-------------------------

或 OR

B. 停任詳情 Details of Cessation  
公司秘書/董事的詳情 (法人團體) Particulars of Company Secretary/Director (Body Corporate)  
中文及英文名稱 Chinese and English Names

(Nil)

B. 停任詳情 Details of Cessation

停任原因 Reason for Cessation  辭職/其他 Resignation/Others  去世 Deceased

停任日期 Date of Cessation	01	03	2017
	日 DD	月 MM	年 YYYY

上述董事或候補董事在停任日期後，是否仍然擔任該公司的候補董事或董事職位？  
Will this director or alternate director continue to hold office as alternate director or director in this company after the date of cessation?  是 Yes  否 No

Appointment of Tso Siu Ho as Director w.e.f. 01.03.2017:

WD2A 410

公司編號 Company Number  
1663953

公司秘書/董事(自然人) Appointment of Company Secretary/Director (Natural Person)  
委任超過一名自然人為公司秘書/董事，請用續頁B填報 Use Continuation Sheet B if more than 1 natural person is appointed as company secretary/director  
請在適用的空格內加上✓號 Please tick the relevant box(es)

身分 Capacity  公司秘書 Company Secretary  董事 Director  候補董事 Alternate Director

代替 Alternate to (Nil)

中文姓名 Name In Chinese 曹笑豪

英文姓名 Name In English 姓氏 Surname TSO 名字 Other Names Siu Ho

前用姓名 Previous Names 中文 Chinese (Nil) 英文 English (Nil)

別名 Alias 中文 Chinese (Nil) 英文 English (Nil)

地址 Address 國家/地區 Country/Region Hong Kong

電郵地址 Email Address (Nil)

身分證明 Identification (a) 香港身分證號碼 Hong Kong Identity Card Number 2 4 1 3 3 4 0 (5) (b) 護照 Issuing Country (Nil) 號碼 Number (Nil)

委任日期 Date of Appointment 01 03 2017 日 DD 月 MM 年 YYYY

上述董事或候補董事在獲得這次委任時，是否已經是這公司的現任候補董事或董事？  
Is this director or alternate director already an existing alternate director or director in this company at the time of this appointment?  是 Yes  否 No

提示 Advisory Note 所有公司董事均應閱讀公司註冊處編印的《董事責任指引》，並熟悉該指引所概述的董事一般責任。  
All directors of the company are advised to read "A Guide on Directors' Duties" published by the Companies Registry and acquaint themselves with the general duties of directors outlined in the Guide.

出任董事職位同意書 Consent to Act as Director \* 請刪去不適用者 Delete whichever does not apply  
本人同意擔任公司的董事/候補董事，並確認本人已年滿 18 歲。  
I consent to act as Director/Alternate Director of this company and confirm that I have attained the age of 18 years.

簽署 Signed : \_\_\_\_\_

12.6. From the above, we find that the documentary evidence categorically indicates that the appellant and his mother had resigned from the said directorship w.e.f. 01<sup>st</sup> March 2017, even though the said application was submitted on 23<sup>rd</sup> October. The appointment of another person by name "Tso Siu Ho", as Director w.e.f. 01<sup>st</sup> March 2017, clearly indicates that during the relevant period when the imports took place, the appellant was neither responsible nor associated with the state of affairs of the overseas supplier. In this context, we also note that it is an admitted position in the impugned order itself that the invoices and packing lists were signed by Mr. Hertman Kong on behalf of the overseas supplier, who was not authorized by the appellant. Thus, in view of the above, we find that the appellant had no nexus with such alleged imports whatsoever. Accordingly, we hold that no *mala fide* can be attributed to the appellant for the alleged mis-declaration in the impugned consignments.

13. The next allegation of the Revenue is that the overseas supplier had no FOREX Account and as such the remittances towards the alleged imports were being received by the appellant through channels other than banking channels. In this regard, we observe that the appellant and his mother were not Directors of the overseas supplier when the alleged import took place. Thus, we find merit in the submission of the appellant that he was completely unaware of the affairs of the company for the said period. Hence, we are of the opinion that non-receipt of proceeds through formal banking channels cannot be attributed to the appellant in absence of any corroborative evidence. Further, the appellant has submitted that during the period when he was the

Director of the overseas supplier, there was an active bank account in the name of ZFTL. In this regard, we have found that the Id. adjudicating authority has not given any finding contrary to this claim made by the appellant. It is also observed that the Revenue has failed to establish the receipt of any amount by the appellant other than the freight forwarding charges. Thus, we hold that the allegation of receipt of remittance through other than banking channels under the directorship of the appellant is totally based on assumptions and presumptions and the said claim of the Revenue is not supported by any evidence.

13.1. Thus, we hold that the appellant cannot be implicated in the offence on the above ground.

14. Regarding the penalties imposed on the appellant, we find that such penalties have been imposed under Sections 112 (a), 112(b) and 114AA of the Customs Act, 1962. These penalties have been imposed on the allegations that the appellant has acted both as the overseas supplier and the freight forwarder and provided active assistance in the alleged mis-declaration of the goods imported vide three consignments.

14.1. It is a fact on record that Mr. Sushil Kumar Singh, Proprietor of M/s. Sri Ram Traders, recorded on 28.06.2017, 25.07.2017 and 11.09.2017, the consignment under the Bill of Entry No. 9948788 dated 03.06.2017 was imported using his IEC and that these goods were actually imported by Badshah. He also inter alia stated that the goods imported under Bill of Entry No. 9948804 dated 03.06.2017 were actually brought by Navneet Kumar, DC; if there is any duty liability on these consignments, the duty is to be paid by the actual importers. Admittedly, it has

also been stated by Mr. Sunil Kumar Singh in his statements that he had lent his IEC to Badshah and Navneet Kumar for easy money. Further, in respect of the third consignment under Airway Bill No. 21715543404, Shri Sunil Kumar Singh has stated that the same were "in the name of his firm Sri Ram Traders". Thus, the statements of Mr. Sushil Kumar Singh clearly indicate that appellant herein had nothing to do with the goods imported in the above said consignments. Consequently, we do not find any justification for imposition of penalties on the appellant on the ground that the goods imported under the above said consignments were mis-declared.

14.2. In this regard, we also take note of the fact that the alleged act of mis-declaration has happened in a foreign territory for which the appellant, who acted as a freight forwarder in India, has been penalised. It is pertinent to observe that the penal provisions of Sections 112(a), 112(b) and 114AA of the Customs Act, 1962 cannot be made applicable for an activity said to have happened in a foreign territory. Thus, prima facie, we are of the view that the penalties imposed on the appellant are liable to be set aside on this ground itself.

14.3. Further, regarding the merits of the penalty imposed on the appellant, it is seen that the appellant's job was merely to collect the delivery order from the airline and pass it on to the Consignee/Importer. He was not expected to be aware about the contents of the packages. Further, the appellant did not have any direct communication with the customs officers or the other alleged perpetrators of the modus operandi as evident from

the call records produced in the impugned notice. In these circumstances, we are of the view that the appellant cannot be said to have abetted any act or omission rendering the goods liable to confiscation. Thus, the penalty imposed on the appellant under Section 112(a) of the Act is found to be legally unsustainable and hence, the same is set aside.

14.4. As regards the penalty imposed under Section 112(b) of the Customs Act, 1962, it is worthwhile to note that the penalty under this section is imposable only when it is established that the appellant has abetted the mis-declaration of the imported goods knowingly well that the said imported goods were liable for confiscation. However, we find that the appellant was only a freight forwarder. He was neither the supplier, nor the carrier, nor the importer, nor the CHA. The investigation has not brought in any evidence against the appellant regarding his involvement in the alleged mis-declaration. Accordingly, we hold that the penalty imposed on them under Section 112(b) of the Customs Act, 1962 is not sustainable and hence we set aside the same.

14.5. Regarding the penalty imposed on the appellant under Section 114AA *ibid.*, we observe that the penalty under this section is imposable only in those situations where export benefits are claimed without exporting the goods and by presenting forged documents and not in cases of importation. The same view has been taken in the judgment of this Tribunal in case of *M/s. Gainwell Commosales Private Limited Versus Commissioner of Customs (Import-I), Mumbai [2025 (8) TMI 1483 – CESTAT, KOLKATA]* and in the case of *Access World Wide Cargo Vs. Commissioner of Customs, Bangalore [2022 (379) E.L.T. 120]*.

14.5.1. In any event, penalty under Section 114AA can be imposed only upon a person who 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 for the purpose of the Customs Act. We find that the role of the appellant in this case was limited to freight forwarding work only. It is also observed that while doing freight forwarding work, there was no violation of any of the provisions of Customs Act has been established against the appellant. As such, we hold that penalty under Section 114AA cannot be imposed on the appellant. Reliance in this regard is being placed on the judgement of the Tribunal, Delhi in the case of **Mayank Gupta Vs. Commissioner of Customs (Export), New Delhi [(2024) 25 Centax 383]**. Accordingly, we set aside the penalty imposed on the appellant under Section 114AA of the Act.

14.6. From the impugned order, we find that the Ld. adjudicating authority has contended that the appellant has introduced Mr. Sahanshah Mallick (alleged actual importer of one of the consignments) to Mr. Sushil Kumar Singh and thus provided active assistance in the mis-declaration. In this regard, we are of the view that merely because the appellant has introduced Mr. Sahanshah Mallick to Mr. Sushil Kumar Singh, it cannot automatically lead to the allegation that the appellant has connived to mis-declare the goods imported. Reliance in this regard is placed on the decision of the Tribunal, Kolkata in the case of **Sajal Das Vs. Commissioner of Customs, Airport & Air Cargo Complex Commissionerate [Final Order No. 76182 of 2025]**.

15. In view of the above findings, we hold that of penalties of Rs.50,00,000/- each imposed on the appellant under Sections 112(a)(i), 112(b)(i) and 114AA of the Customs Act, 1962, are not sustainable and hence we set aside the same. Thus, we allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on **19.09.2025**)

Sd/-

**(R. MURALIDHAR)**  
MEMBER (JUDICIAL)

Sd/-

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)

Sdd