



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

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CESTAT Allahabad clarified that the word “or” in Section 114A is disjunctive not interchangeable with “and”



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In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Allahabad, has dismissed an appeal filed by the Revenue, affirming the principles laid down by the Karnataka High Court regarding the interpretation of Section 114A of the Customs Act, 1962. This decision reiterates the importance of statutory interpretation and sets a precedent for similar cases in the future.

Background of the Case

The case arose from an appeal filed by the Commissioner of Customs, Noida, challenging the non-imposition of penalty on the interest amount under Section 114A of the Customs Act, 1962. The respondent, M/s Royal Steel Trading, had imported goods from Malaysia under various Bills of Entry and claimed exemption under the Free Trade Agreement (FTA) based on a Certificate of Origin. However, upon verification, the certificate was found to be fake, leading to the issuance of a Show Cause Notice and subsequent adjudication.

The adjudicating authority ordered the confiscation of goods valued at Rs. 1,03,53,747, imposed a redemption fine of Rs. 8,00,000, confirmed the demand for customs duty of Rs. 10,07,937 along with applicable interest, and imposed penalties under Sections 114A and 114AA of the Customs Act. However,

no penalty was imposed on the interest amount under Section 114A, which became the subject of the Revenue's appeal.

Key Legal Issue

The Revenue argued that the penalty under Section 114A should be equivalent to both duty and interest, relying on CBEC Circular No. 61/2002-CUS dated 20.09.2002. However, the Tribunal referred to the Karnataka High Court's decision in *Sony Sales Corporation* (2021) and clarified that the language of Section 114A uses the term "or," which is disjunctive and not interchangeable with "and." The provision clearly distinguishes between situations where a person is liable to duty or interest, and the penalty is to be levied accordingly.

Tribunal's Decision

The Tribunal, upheld the adjudicating authority's decision and dismissed the Revenue's appeal. It emphasized that the CBEC Circular cannot override the plain language of the statute and reaffirmed the principle of statutory interpretation laid down by the Karnataka High Court. The Tribunal also cited its earlier decision in *Commissioner of Customs, Noida vs. M/s Titra Trading Pvt. Ltd* to support its stance.

Implications of the Ruling

This ruling has far-reaching implications for customs law enforcement and adjudication. It underscores the importance of adhering to the plain language of statutory provisions and ensures that administrative clarifications do not contradict legislative intent. The decision also provides clarity on the application of penalties under Section 114A, offering guidance to both taxpayers and authorities.

Conclusion

The dismissal of the Revenue's appeal by the CESTAT Allahabad is a landmark decision that reinforces the principles of statutory interpretation and judicial consistency. By upholding the Karnataka High Court's interpretation of Section 114A, the Tribunal has set a precedent that will shape future cases involving customs penalties. This case serves as a reminder of the importance of legal precision and the role of judicial bodies in safeguarding the integrity of statutory provisions.

Source: CESTAT Allahabad

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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70335 of 2023

(Arising out of Order-in-Appeal No.26/Pr.Commr./Noida-Cus/2022-23 dated 29/12/2022 passed by Commissioner of Customs, ICD, Dadri, Noida)

Commissioner of Customs, Noida
(Conco Complex, P.O. Container
Depot, Tilpata, Noida)

.....Appellant

VERSUS

M/s Royal Steel Trading,

....Respondent

(B-62, Wazirput Industrial Area, North West Delhi-110052)

APPEARANCE:

Smt Chitra Srivastava, Authorised Representative for the Appellant
None, for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70707/2025

DATE OF HEARING : 01 October, 2025
DATE OF DECISION : 01 October, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.26/Pr.Commr./Noida-Cus/2022-23 dated 29/12/2022 passed by Commissioner of Customs, ICD, Dadri, Noida. By the impugned order following has been held:-

"ORDER

(i) I hereby order for confiscation of the goods having assessable value (in total) Rs. 1,03,53,747/- imported vide Bills of Entry No. 6067676 dated 13.12.2019, 6382964 dated 07.01.2020, 5986872 dated 07.12.2019 and 5709117 dated 16.11.2019 under Section 111(m) and 111(o) of the Customs Act, 1962.

(ii) I impose a redemption fine amounting to Rs.8,00,000/- (Rupees Eight Lakhs only) under Section 125 of the Customs Act, 1962 on the confiscated goods mentioned at (i) above.

(iii) I confirm the demand and recovery of Customs duty of Rs.10.07,937/- (Rs. Ten Lakhs Seven Thousand Nine Hundred Thirty Seven Only) and applicable interest thereon in respect of goods confiscated against M/s Royal Steel Trading under the provisions of Section 28(4) and Section 28AA of the Customs Act, 1962.

(iv) I do not impose any penalty on M/s Royal Steel Trading under the provisions of Section 112 of the Customs Act, 1962.

(v) I impose a penalty of 10,07,937/- (Rs. Ten Lakhs Seven Thousand Nine Hundred Thirty Seven, Only) under the provisions of Section 114A of the Customs Act, 1962 on M/s Royal Steel Trading. However, as per Section 114A First and Second Proviso, If duty or interest as determined are paid within a period of thirty days from the date of communication of this order, the amount of penalty liable to be paid under this section shall be twenty-five per cent of the duty or interest, so determined, that the benefit of reduced penalty shall be available subject to the condition the, amount of penalty so determined has also been paid within thirty days.

(vi) I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) under the provisions of Section 114AA of the Customs Act, 1962 on M/s Royal Steel Trading.”

2.1 Respondent filed following Bill of Entry for import of the goods declared from Malaysia as under-

Bill of Entry		Goods	Supplier
Number	Date		
6067676	13.12.2019	Non Magnetic Stainless Steel Roiled Cold Circle Grade J3 Size 25MM (W.B600MM)	Artfransi International Sdn Bhd,
6382964	07.01.2020	Cold Rolled Stainless Steel Coil Grade J3	EZY Metal Enterprise
5986872	07.12.2019	Cold Rolled Stainless Steel Coil	Cekap Prima Sdn Bhd

5709117	16.11.2019	Grade J3 Size: 0.19, 0.21 mm (W.B 600mmn)I	
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2.2 The respondent had availed exemption on the basis of self assessed duty under the provisions of Section 17(1) of the Act and claimed the benefit of Free Trade Agreement (FTA) under Notification No. 46/2011 dated 01.06.2011 on the basis of Certificate of Origin purported to be issued by the Secretary General, Ministry International Trade and Industry Malaysia. They accordingly self assessed duty in terms of Section 17(1) of the Customs Act, 1962.

2.3 On the basis of the verification conducted, it was found that Certificate of Origin was fake and was not issued by the concerned authority in Malaysia. A Show Cause Notice dated 06.12.2021 was issued to the respondent asking them to show cause as to why:

- (i) *The impugned goods having assessable value Rs 1,03,53,747/- imported vide Bill of Entries No 6067676 dated 13.12.2019, 6382964 dated 07.01.2020, 5986872 dated 07.12.2019 and 5709117 dated 16.11.2019 should not be confiscated under Section 111(m) and 111(o) of the Customs Act, 1962.*
- (ii) *The duty of Customs amounting to Rs 10,07,937.15 should not be demanded along with applicable interest and recovered from them under sub section (4) of Section 28 read with Section 28AA of the Customs Act, 1962.*
- (iii) *A penalty should not be imposed under Section 112 of the Customs Act, 1962.*
- (iv) *A penalty should not be imposed under Section 114A of the Customs Act, 1962.*
- (v) *A penalty should not be imposed under Section 114AA of the Customs Act, 1962.*

2.3. The show cause notice has been adjudicated vide impugned order referred in para-1 above.

2.4 Aggrieved with the non-imposition of penalty on the interest amount under Section 114A, the Revenue has filed the present appeal before this Tribunal.

3.1 I have heard Smt Chitra Srivastava, Authorized Representative for the Revenue and perused the records of the case.

3.2 None has appeared on behalf of the Respondent despite service of notice.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 The Revenue has relied on the CBEC Circular No.61/2002-CUS dated 20.09.2002 clarifying that penalty under Section 114A of the Act should be equivalent to duty and interest both and therefore, the Adjudicating Authority has erred in not imposing penalty on the interest amount also. I do not agree with the submissions of the Revenue in view of the decision of the Karnataka High Court in Sony Sales Corporation 2021(376) ELT 472(Kar.) interpreting the provisions of Section 114A to say that the expression used is "or" and not "and" which is not interchangeable. The observations of the Court are quoted below:-

12. The aforesaid rule of statutory interpretation was referred to by Constitution Bench of the Supreme Court in Indore Development Authority v. Manohar Lal and Others, AIR 2020 SC 1496. From perusal of the relevant extract of Section 114A, it is evident that the language employed by the Legislature is plain and unambiguous and the provision contains a positive condition with regard to levy of penalty equal to duty or interest and does not contain any negative condition. The expression used is „or“ which is disjunctive between duty or interest and further use of expression as the case may be clearly suggest that aforesaid provision refers to two different persons and two different situations viz., one in which a person will be liable to duty and in other he may be liable to pay interest only and provides that in both the situations the person liable to duty would be liable to penalty equal to duty and person liable to interest would be liable to penalty equal to interest.

Therefore, in view of law laid down by Constitution Bench of Supreme Court, the word „or“ cannot be interpreted as „and“.

13. So far as reliance placed by Learned Counsel for the appellant on the clarification issued by Central Board of Excise and Customs dated 20-9-2002 is concerned, suffice it to say that the aforesaid clarification cannot be contrary to the plain language of the provision. For yet another reason, no interference is called for as the Tribunal has taken a similar view in the case of B. Suresh Vasudev Baliga (supra) and there is no material on record to show that the aforesaid order was challenged by the Revenue. Therefore, in the facts of the case, the view taken by the Tribunal otherwise also binds the Revenue.”

4.3 The principle of law settled by the Hon'ble Karnataka High Court and subsequently followed by the Tribunal in the case of Commissioner of Customs, Noida Versus M/s Titra Trading Pvt. Ltd Final Order No. 70087/2025 dated 24.03.2025 is clearly applicable to the facts of the present case and hence I do not find any infirmity in the impugned order to the extent challenged in revenue appeal and the same is hereby affirmed.

5.1 The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court)

**(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

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