

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

**Customs Appeal No. 21699 of 2015**

(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-009 & 010-15-16 dated  
28.04.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals),  
Visakhapatnam)

**M/s Paschal Form Work (I) Pvt Ltd.,** .. **APPELLANT**  
S.No.208-1&2,  
Bayyavaram Village,  
Anakapalli,  
Andhra Pradesh – 530 031.

*VERSUS*

**Commissioner of Customs** .. **RESPONDENT**  
**Visakhapatnam - Customs**  
Customs House,  
Port Area,  
Visakhapatnam,  
Andhra Pradesh – 530 035.

**AND**

**Customs Appeal No. 21698 of 2015**

(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-009 & 010-15-16 dated  
28.04.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals),  
Visakhapatnam)

**Shri Eldo Vargese, General Manager** .. **APPELLANT**  
Plot No.901,  
Road No.46,  
Jubilee Hills,  
Hyderabad,  
Telangana – 500 033.

*VERSUS*

**Commissioner of Customs** .. **RESPONDENT**  
**Visakhapatnam - Customs**  
Customs House,  
Port Area,  
Visakhapatnam,  
Andhra Pradesh – 530 035.

**APPEARANCE:**

Ms Nandita Reddy, Advocate for the Appellant.  
Shri B. Subhas Chandra Bose & Shri B. Sangameshwar Rao, Authorized  
Representatives for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**  
**HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30021-30022/2026**Date of Hearing: 12.08.2025  
Date of Decision: 09.01.2026**[ORDER PER: ANGAD PRASAD]**

M/s Paschal Form Work (I) Pvt Ltd., (hereinafter referred to as appellants) has filed Appeal No. C/21699/2015 against the impugned order / Order-in-Appeal No.VIZ-CUSTOM-000-APP-009-15-16 dated 28.04.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam.

2. Shri Eldo Vargese General Manager of the Company has filed Appeal No. C/21698/2015 against the same O-I-A. The Adjudicating Authority imposed penalty 50,000/- against him and upheld by Commissioner (Appeals). Since, both appeals have been filed against same Order-in-Appeal. Therefore, heard simultaneously to decide together.

3. The fact in brief, as per appellants that the appellants issued one (1) Purchase Order (PO) No. PFW/020/2009-10 dated 25.05.2009 to their parent company for purchase of Steel bars of various lengths. The PO contained two separate offers i.e., 400001382 and 400001383 of 86,139.67 Euro each and C&F charges of 6,030 Euro. Based on the PO, the parent company exported goods against 3 invoices. The goods were shipped vide Bill of lading dated 24.06.2009 and reached Visakhapatnam on 28.07.2009. All the relevant information, documents and invoices in original were handed over to M/s Sea Bird Sea and Air Logistics Division, a CHA for clearing the imported goods. The two (2) offer numbers with equal quantity and amount mentioned in the PO created confusion in the mind of the CHA. The CHA believed that only one offer number and only one invoice (Invoice No. 208/10034202 dated

16.06.2009) is required to be taken into account. Further, CHA could not understand what was meant by 'carriage sale' (4020 Euro), as mentioned in invoice. In this confusion, CHA requested the appellant to amend the PO and raise a fresh PO for 86,137.67 Euro i.e. excluding the C&F charges and to amend the invoice accordingly. As requested by the CHA, the appellant shared the amended/revised PO, however, the appellants did not amend the invoice copies. The CHA scanned the invoice and deleted C&F charges i.e. Euro 4,020 in the invoice. Since it was the very first import by the appellants, they did not understand the significance of the mistake made by the CHA. Further, since they were under pressure to get the goods cleared from the port, they solely relied on the advice of the CHA and raised the revised purchase order and gave it to CHA for clearing the goods.

4. Thereafter, the CHA filed the BOE No. 555348 dated 31.08.2009 along with requisite documents to clear the goods and the same was facilitated through RMS without assessment and examination. Further, CHA had advised the appellants that the Customs duty and SVB charges amounted to Rs. 11,26,939/- and Rs. 63,743/- respectively and the same were discharged on 02.09.2009 and 09.09.2009. Post payment of customs duty, the consignment was cleared from port on 05.09.2009 and was duly accounted in the appellant's factory record.

5. Subsequently, in December 2009 while reconciling records for costing purposes, the appellants noticed that in the BOE dated 31.08.2009, duty was not discharged on the remaining 2 invoices (Invoice Nos. 208/10034203 dated 16.06.2009 and 208/10034204 dated 16.06.2009) and on carriage sale value of the first invoice. The appellants immediately brought the said discrepancy to the attention of CHA vide letter dated 21.12.2009 and

conveyed its intention to pay duties along with interest and requested the discrepancy to be taken up with the Customs Department. Thereafter, the appellants were continuously following up with the CHA for resolution of the issue. On the instruction of the appellants, the CHA approached the Customs Department and conveyed the facts and appellants' suo moto willingness to pay all the duties short paid along with interest. After approaching the Customs Department, the CHA vide letter dated 09.01.2010 admitted to lapse on their part and assured the appellants that necessary steps shall be taken before the Customs for clearing this issue.

6. Based on the information submitted by the CHA, the Customs Department initiated an investigation and conducted search at the appellants' factory premises on 15.02.2010 and seized the imported goods. To avoid interruption of the production plan, the appellants deposited the differential duty, SVB charges, interest, etc. and got the goods provisionally released vide letter dated 29.08.2010.

7. Thereafter, summons were issued to various personnel of the appellants and the CHA and statements were recorded. Based on the said investigation, SCN F. No. S 22/MISC/22/2008 SIIB dated 05.07.2010 and in parallel the matter was referred to SVB in respect of the declared value on account that it was a related party transaction.

8. The Adjudicating Authority vide Order-in-Original No. 11/2012 27.12.2012 passed the order as follows:

#### ORDER

- (i) I hold that the value of the goods imported under Bill of Entry No. 555348 dated 31.08.2009 as Euro 219,548.68 CIF which works out to Assessable value of Rs 1,54,24,836/- under Section 14 of

Customs Act, 1972 read with Order-in-Original No. 18625/2012 dated 31.03.2012 of SVB, Chennai.

- (ii) I hold that the importer had suppressed and willfully mis-declared the facts resulting in short levy/ short collection of duty. I therefore, confirm the demand of short paid duty of Rs. 17,45,587/- (Rupees seventeen lakh forty five thousand five hundred and eighty seven only) under Section 28 of the Customs Act, 1962, as per the work sheet enclosed. I order for adjustment of the same from the EDD of Rs. 63,742/- made vide RD No. 4/9.9.09, Rs. 66, 935/- vide RD No. 14 dated 02.03.2010 and Revenue Deposit of Rs. 21,14,193/- voluntarily deposited by the importers vide RD Nos. 15/2.3.1010 and 55/17.3.2010.
- (iii) I also order that M/s. Paschal shall pay applicable interest of Rs. 1,26,694/- (Rupees one lakh twenty six thousand six hundred and ninety four only) on the short paid duty of Rs. 17,45,587/- under section 28 AB of the Customs Act, 1962, as per the work sheet enclosed. I order for adjustment of the same from Rs. 1,59,374/- voluntarily deposited by the importers towards interest vide RD No. 54/ 17.03.2010.
- (iv) I order for confiscations of goods imported vide Bill of Entry No. 555348 dated 31.08.2009 which were detained vide Detention Memo O.C.No. 131/2010 dated 19.02.2010 and released provisionally on execution of Bond, under section 111(1) and (m) of the Customs Act, 1962. I, however, give an option to the importers to redeem the same on payment of a redemption fine of Rs. 12,81,964/- (Rupees twelve lakh eighty one thousand nine hundred and sixty four only) under Section 125 of the Customs Act, 1962.
- (v) I impose of a penalty of Rs. 5,00,000/- (Rupees five lakh only) on M/s Paschal Form Work (I) Pvt Ltd., under Section 112(a) of the Customs Act, 1962. I order for adjustment of the same from Rs. 12,50,000/- paid by the importers vide RD No. 79 dated 27.3.2010 towards redemption fine and penalty.
- (vi) I order adjustment of redemption of fine of Rs. 12,81,964/- from the remaining amounts available with the department out of the Revenue Deposits made by the importer as mentioned supra.
- (vii) I impose a penalty of Rs. 50,000/- (Rupees fifty thousand only) on Shri Eldo Varghese, General Manager, M/s Paschal Form Words (I) Pvt Ltd., under Section 112(a) of the Customs Act, 1962.

- (viii) I impose a penalty of Rs. 50,000/- (Rupees fifty thousand only) on Shri Jeevan Vikas, General Manager of M/s. Sea Bird Sea & Air Logistics Pvt Ltd., Custom House Agent, under Section 112(a) of the Customs Act, 1962.
- (ix) I impose a penalty of Rs. 25,000/- (Rupees twenty five thousand only) on Shri STP Srinivas, Asst. Manager, M/s. Sea Bird Sea & Air Logistics Pvt Ltd., Custom House Agent, under Section 112(a) of the Customs Act, 1962.

9. Appellant's filed an appeal before Learned Commissioner (Appeals). Who rejected the appeal and upheld the O-I-O. Hence, appellants filed these appeals before the Tribunal.

10. Learned Counsel for the appellants submits that the appellant suo moto, through their CHA, intimated the Customs Department regarding non-inclusion of second and third invoices for payment of Customs duty at the time of import. The appellants voluntarily deposited differential duty before 3 months the issuance of the Show Cause Notice. The price declared by the appellants has been confirmed by CESTAT, Chennai vide Final Order No. 40450/2024 dated 24.04.2024.

11. Learned Counsel for the appellants submits that the investigation emanated from the appellant's voluntary disclosure of facts through its CHA and not on account of any independent detection of suppression or misstatement or collusion. The CHA admitted and took responsibility for the contraventions of invoice in respect of the subject imports. The appellant's only acted on the wrong advice of the CHA, being a very first importer. Learned Counsel for the appellants relied on Faiveley Transport Rail Technologies India Pvt Ltd., Vs CC - 2025 (7) TMI 1271 - CESTAT, New Delhi wherein, it was held that once the amount of duty was paid with

interest before issuance of SCN, no SCN could have been issued by the DRI in terms of the mandate under Section 28(2) of the Customs Act.

12. Learned Counsel for the appellants also relied on *Wockardt Ltd., Vs CC - (2022) 1 Centax 65 (Tri-Bom)* wherein, held that the differential duty deposited by the appellant's during the investigation includes duty computed on assessable value by loading discount given by the parent company, The appellant's are eligible to refund of such differential duty.

13. Learned Counsel for the appellants submits that the confiscation may be where the assessee has acted with a malafide intention. There is no malafide intention on the part of assessee, therefore, the imported goods are not liable for the confiscation. Learned Counsel for the appellants also submits that the once the goods are cleared for home consumption, the goods are not liable for confiscation under Section 111 of the Customs Act.

14. Learned Counsel for the appellant Shri Eldo Vargese General Manager states that he acted on the advice given by CHA, while clearing the goods. Further, once the mistake was noticed during the internal scrutiny, the same was brought to the notice of CHA for making the short payment goods and based on the information given by the main appellants. Adjudicating Authority also observed about appellant that there is no any malafide intention of the appellants. Appellants relied on *CCS Infotech Ltd., Vs Commissioner of Central Excise, Chennai [2007 (216) ELT 107 (Tri-Chennai)]* and *Kamdeep Marketing Pvt Ltd., Vs Commissioner of Central Excise Indore [2004 (165) ELT 206 (Tri-Del)]*.

15. Learned AR for the Department submits that all the goods imported by 3 invoices covering those goods were not declared in the bill of entry. The

value of the goods declared in the impugned bill of entry was based on a invoice that was created / forged by the CHA by the way of scanning & deletion of the item of "Carriage Sales" for an amount of Euro 4020/- from one of the original invoices. The total value of imported goods covered by three invoices is Euro 181424.84/- against the declared value of Euro 86139.67/-. Therefore, importer & CHA have colluded willfully and mis-declared the value/ quantity of goods by suppressing the facts. The contention of appellant's was not bonofide.

16. Heard Learned Counsel for the appellant Ms. Nandita Reddy and Learned Representative of the Department Shri B. Subhas Chandra Bose & Shri B. Sangameshwar Rao and perused the records with their submissions.

17. The Show Cause Notice was issued on 05.07.2010, whereas, differential duty along with interest was paid by the appellants prior to the issuance of such notice. The payment of differential duty has been showed by the table as below:

<b>Amount deposited towards</b>	<b>Amount</b>	<b>Deposited vide</b>
Differential duty	Rs.12,46,584/-	RD No. 15/02.03.2010
	Rs. 8,67,609/-	RD No. 55/17.03.2010
Interest	Rs.1,59,374/-	RD. 54/17.03.2010
1% EDD on related party transaction	Rs. 66,935/-	RD No. 14/02/03/2010
Deposit for release of goods	Rs. 12,50,000/-	RD No. 79/27.03.2010

18. The appellant states that when they reconciling records for costing purposes, they noticed that the duty was not discharge on the remaining 2 invoices, the appellants immediately brought the said discrepancy to the attention of CHA vide letter dated 21.12.2009 and conveyed its intention to

pay duties along with interest to the Department. The CHA vide letter dated 09.01.2010 approached the Customs Department with admission the lapsed on his part and appellant has deposited the differential duty as above.

19. Therefore, the appellants deposited the differential duty before the issuance of Show Cause Notice. The CESTAT, New Delhi, in the case of Faiveley Transports, supra, wherein, held that once the amount of duty was paid with interest before issuance of SCN, no SCN could have been issued by the DRI in terms of the mandate under Section 28(2) of the Customs Act.

The relevant para of the decision as thus:

“18. The Commissioner erred in issuing the Show Cause Notice to the appellant invoking the extended period of limitation and alleging mis-declaration simply because the importer had classified the goods as per its understanding and not as per the understanding of the DRI during investigation. Clearly, this is not a case of any collusion or willful mis-statement or suppression of facts. Therefore, the demand of duty, even if the classification proposed by the Revenue is accepted, would fall under Section 28(1) of the Act.

19. Once the appellant had paid the entire amount of duty with interest, Show Cause Notice could not have been issued by the DRI because the mandate in Section 28(2) is that the “proper officer shall not serve any notice”. The Show Cause Notice issued by Commissioner in pursuance of the investigation conducted by the DRI is, therefore, contrary to law. The impugned order confirming the proposals in the Show Cause Notice cannot, therefore, be sustained. As we have held that Section 28(2) would not apply to this case because appellant had paid full amount of duty and interest, the appellant cannot now claim the refund either duty or interest.”

20. Tribunal Mumbai, in the case of Wockardt Ltd., Vs CC - (2022) 1 Centax 65 (Tri-Bom) held that the classification of goods was erroneously determined and declared but on being pointed out by revenue authorities during investigation, differential duty along with interest was deposited even

before issuance of Show Cause Notice. No penalty could have been imposed.

The relevant part of the decision is reproduced:

"4.4.1 In view of the principles laid down in the above referred decisions I am of the view that the no penalty could have been imposed on the appellant under Section 114A of the Act. Since, appellant had even before the issuance of the Show Cause Notice deposited the differential duty along with interest the entire proceedings initiated against them by issuance of the Show Cause Notice dated 31.05.2016, were unwarranted and the issue should have been settled as per the Section 28(2) of the Customs Act, 1962."

21. Even, Adjudicating Authority has observed that the importer. They had voluntarily come forward and paid the differential duty together with interest immediately after they were confronted with the irregularity and much before issue of the Show Cause Notice. Therefore, no any mala fide intention for the appellant regarding non-payment of differential duty at the time of import. We find that if the appellant had any malafide intention, he himself would not have disclosed the fact that duty had not paid on the other 2 invoices. The Tribunal Chennai vide Final Order No. 40450/2024 dated 24.04.2024 proceeding related to SVB held that the declared price of the imported goods reflects the true transaction value in terms of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

22. From the above facts, it is clear that the appellants had deposited the differential duty even before the issuance of the Show Cause Notice. The information regarding non-payment of duty on two invoices was provided by the appellants himself and if there had been any malafide intention, he would not have disclosed this information. In such fact & circumstances, the demand, confiscation and penalties is not sustainable against main appellants then penalties on the appellants General Manager is also not

sustainable. Therefore appeals deserve to be allowed and the impugned order is liable to be set aside.

23. Appeals allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 09.01.2026)

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**