

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 2

CUSTOMS Appeal No. 10779 of 2015-DB

[Arising out of Order-in-Appeal No. MUN-CUSTM-000-APP-041-043-14-15 dated 11.03.2015
passed by Commissioner of Customs (Appeals) - Ahmedabad]

Palco Recycle Exchange Limited

.... Appellant

Opp. Khanwadi Ramol Road, Near CTM Cross Road,
Ahmedabad - 382449

VERSUS

Commissioner of Customs, Mundra

.... Respondent

Office of the Principal Commissioner of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat -370421

WITH

CUSTOMS Appeal No. 10778 of 2015-DB

[Arising out of Order-in-Appeal No. MUN-CUSTM-000-APP-041-043-14-15 dated 11.03.2015
passed by Commissioner of Customs (Appeals) - Ahmedabad]

Pramodkumar Ramanlal Agarwal

.... Appellant

Director of M/s. Palco Recycle Exchange Limited
Opp. Khanwadi Ramol Road, Near CTM Cross Road,
Ahmedabad - 382449

VERSUS

Commissioner of Customs, Mundra

.... Respondent

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat -370421

AND

CUSTOMS Appeal No. 11353 of 2015-DB

[Arising out of Order-in-Appeal No. MUN-CUSTM-000-APP-041-043-14-15 dated 11.03.2015
passed by Commissioner of Customs (Appeals) - Ahmedabad]

Vishal Gupta

.... Appellant

Vice President, M/s, Vistas Trading,
106-8, Eastern Avenue, Sainik Farms,
NEW DELHI -110062

VERSUS

Commissioner of Customs, Mundra

.... Respondent

Office of the Principal Commissioner of Customs, Port
User Buld. Custom House Mundra, Mundra
Kutch, Gujarat -370421

APPEARANCE :

Shri Dr. Nilesh V. Suchak CA & Shri Sharan Rayaprol, Advocate for the Appellants
Shri Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

DATE OF HEARING : 19.09.2025

DATE OF DECISION: 18.03.2026

FINAL ORDER NO. 10200-10202/2026

SATENDRA VIKRAM SINGH :

M/s. Palco Recycle Exchange Limited (Appellant) filed Bill of Entry No. 7916007 dated 11.09.2012 through CHA M/s. Unique Speditorer Pvt. Limited, Gandhidham for import of 25.175MT of aluminum scrap "Terse" from M/s. RKG International FZE, UAE. The Pre-shipment Inspection Certificate (PSIC) in this case was issued by M/s. Worldwide Logistics Survey and Inspection Group and Affiliates (WLSI), New Delhi. On the basis of intelligence that WLSI, New Delhi as well as M/s. Geo Chem Middle East, Dubai were issuing PSIC without inspecting the cargo at the port of loading/ shipper's yard, DRI searched the office premises of M/s. WLSI, New Delhi and investigated the matter. They recorded the statements dated 07.09.2012 of Shri Dinesh Aneja, Prop. of M/s. WLSI who stated that New Delhi and Sydney are the branches of M/s. WLSI, USA. He stated that DGFT vide circular dated 21.11.2005 had suspended authorisation of WLSI, Group and affiliates USA and again on 04.02.2011 authorisation of WLSI, Sydney was temporarily suspended. They found that the importer had submitted another PSIC issued by M/s. Geo Chem, Middle East, Dubai without physical inspection of the cargo at the port of loading. Statements of Shri Pramodkumar Ramanlal Agarwal, Director of the Appellant Company and statements of Shri Vishal Gupta, Vice President of M/s. Vistas Trading, New Delhi (who was indenter in this case), were recorded on the basis of which the department issued Show Cause Notice to the appellant proposing confiscation of seized 25.175MT of aluminum scrap 'Terse' alongwith penalty under Section 112(a) of the Customs Act, 1962. It also proposed penalty on Shri Pramodkumar Ramanlal Agarwal, (Appellant No.2) under Section 112(a) and on Shri Vishal Gupta, Vice President of M/s. Vistas Trading (Appellant No.3) under Section 112(a) and Section 114AA of the Customs Act, 1962.

There was also proposal to impose penalty on Shri Dinesh Aneja, Prop. of M/s. WLSI, M/s. Geo Chem Laboratories Pvt. Limited, Mumbai and M/s. Geo Chem Middle East, Dubai under section 112(a) and 114AA of the Customs Act, 1962.

1.2 The matter was adjudicated by the Additional Commissioner who vide Order dated 26.04.2014 confiscated the seized goods under Section 111(d) of the Customs Act, 1962 and gave the importer an option to redeem the same on payment of redemption fine of Rs. 4lakh. He also imposed penalty of Rs. One lakh on the appellant and penalty of Rs. 50,000/- on it's Director Shri Pramodkumar Ramanlal Agarwal, under Section 112(a) of the Customs Act, 1962. A penalty of Rs.4Lakh each was imposed on Shri Dinesh Aneja, Shri Vishal Gupta, Vice President, M/s. Geochem Laboratories Pvt. Limited, Mumbai and M/s. Geo Chem Middle East, Dubai under Section 112(a) and a penalty of Rs. 25Lakh each on Shri Dinesh Aneja, M/s. Geochem Laboratories Pvt. Limited, Mumbai and M/s. Geo Chem Middle East, Dubai under Section 114AA of the Customs Act, 1962.

1.3 Against the above order, the appellant, its Director Shri Pramodkumar Ramanlal Agarwal and Shri Vishal Gupta, Vice President of M/s. Vistas Trading filed appeals before Commissioner (Appeals) who found them guilty of issuance and use of fake PSIC and therefore, held that import of Aluminum scrap was in violation of the guidelines of Foreign Trade Policy and para 2.32.2 of the Hand Book of Procedure. He vide impugned order dated 11.03.2015 dismissed their appeals against which these appellants have filed appeals before this Tribunal.

1.4 The appellant as well as its Director Shri Pramodkumar Ramanlal Agarwal took the following grounds:-

(a) The goods imported by them were cleared after 100% examination by the Customs and therefore, it was not contrary to any prohibition imposed under any law. Hence, confiscation of the said goods under Section 111(d) of the Customs Act, 1962 and imposition of redemption fine is absolutely illegal.;

(b) Under Section 112(a) of the Customs Act, 1962, 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 penalty as prescribed therein. Since the acts are not liable to confiscation, penalty on them under Section 112(a) is also not sustainable.

(c) They have complied with prescribed requirement and therefore, are not guilty of contravention of Foreign Trade Policy. The case has been made on the basis of statements dated 25.09.2012 of the Director of the appellant Company that it was informed by the indenter that no pre-inspection was done by M/s. Geo Chem, Middle East, Dubai for the said consignment which was only on hearsay.

(d) Para 18.2 of the Order-in-Original dated 13.06.2014, at point No.7, mentions that PSIC was issued by M/s. Geo Chem Middle East, Dubai after due inspection of the consignment thus, it is not a fake or fabricated certificate. There are numerous judgments which lay down that goods cannot be confiscated and penalty cannot be imposed when there is no act or omission or malafide.

(e) The consignment in question was intended to be cleared after submission of a pre-shipment inspection certificate from an agency approved by DGFT which shows their inclination to follow the law. If inspecting agency which issued the certificate does not do its work properly, it is for the DGFT authority to take appropriate action against the inspecting agency. They rely upon the following case laws:-

- (i) AIA Engineering Ltd Vs. CC – 2011 (274) ELT 470 (Tri. Ahmd)
- (ii) Stainless India Ltd Vs. CC – 2011 (264) ELT 281 (Tri. Del.)
- (iii) Arya International Vs. CC – 2010 (258) ELT 441 (Tri. Ahmd.)
- (iv) Alang Metal Exim Pvt. Ltd Vs. CC – 2015 (328) ELT 665 (Tri. Ahmd.)
- (v) CC vs. Senor Metals Pvt. Limited - 2009 (2360) ELT 445 (Guj.)
- (vi) CMA CGM Agencies (I) Pvt. Limited vs. CC – 2016 (341) ELT 311 (Tri. Chennai)
- (vii) Procelain Crafts & Components Exim (P) Limited vs. CC, Calcutta – 2001 (138) ELT 471 (Tri. Kol.)
- (viii) Akbar Badruddin Jiwani vs. CC – 1990 (47) ELT 161 (SC)
- (ix) Extrusion vs. CC, Calcutta – 1994 (70) ELT 52 (Cal.)

In view of above, the appellant as well as its Director prayed for setting aside confiscation of goods, imposition of redemption fine and penalties on them by allowing their appeals.

2. Shri Vishal Gupta, Vice President of M/s. Vistas Trading, New Delhi took the following grounds:-

(a) It is alleged that he had actively and knowingly involved himself in issuance of fake PSIC for import of aluminum scrap by M/s. Palco Recycle Exchange Limited. As indenter, he negotiated with Shri Rajesh Agarwal of M/s. RKG International FZE, Dubai. The foreign supplier (shipper) had forwarded the shipment documents including PSIC issued by WLSI, New Delhi vide e-mail dated 19.07.2012 to Shri Ravindra Bisht of M/s. Vistas Trading, Shri Vishal Gupta and also copied to Shri Rajesh Agarwal. Therefore, by receiving and forwarding mails, he had not indulged himself in any manner in preparation or issuing of the PSIC as alleged.

(b) As per importer's request to get PSIC from any other inspection agency as Customs was not accepting PSIC issued by WLSI, New Delhi, he contacted shipper to get PSIC issued from M/s. Geo Chem Middle East, Dubai which on investigation, was found to be fake/fraudulent for the reason that it was issued without proper inspection. The entire process does not indicate his role other than asking the shipper for issuance of proper PSIC.

(c) He never witnessed or is privy to the process of inspection of goods at the load port by the representatives of the approved Agency. In fact, both the certificates were valid on the date of import and on a query raised by the Customs on the certificate issued by M/s. Geo Chem Middle East, Dubai, the importer had submitted a clarificatory letter dated 13.09.2012 issued by the issuer of PSIC themselves.

(d) Penalty has been imposed on him under Section 112(a) of the Customs Act, 1962 for abetment in issuance of fraudulent PSIC whereas the fact is that the importer had submitted valid PSIC to the Customs and none of them were fake.

(e) DGFT Circular No. 16(RE-2010)/2009-2014 dated 04.02.2011, directs not to accept PSIC issued by WLSI, Sydney, Australia. Therefore, restriction is imposed on acceptance of PSIC issued by WLSI, Sydney and not on those issued by WLSI, New Delhi which is

enlisted at Sr. No. 94 of the appendix 5 of the hand book 2009-2014. The imports were made under proper documents including mandatory PSIC and there was no intention to evade duties in any manner and hence, impugned goods are not liable to confiscation. His role was confined to help the supplier and meet the importer's request to have another PSIC issued by a DGFT approved agency. Therefore, he is not liable to any penalty under the said Section. He relied on following decisions:-

(i) M/s. Shaan Marine Service Pvt Limited vs. CC (Import), Mumbai - 2015 (318) ELT 264 (Tri-Mumbai)

(ii) M/s. Coral Healthcare Pvt. Limited vs. CC (Import), Nhava Sheva - 2015 (318) ELT 157 (Tri-Mumbai)

(iii) M/s. Ganesh Bath Gallery vs. CC (Prev) - 2015 (318) ELT 138 (Tri-Delhi)

(iv) M/s. J.K. Synthetics Limited vs. CC, Kandla - 2015 (317) ELT 370 (Tri-Ahmd)

(v) Commissioner of Customs vs. Senor Metals Pvt. Limited - 2009 (236) E.L.T. 445 (Guj.)

(vi) NGA Steels Pvt. Limited vs. Commissioner of Customs, Chennai - 2010 (262) E.L.T. 578 (Tri. Chennai)

(vii) Shri Shakti Iron & Steel Rerolling Mill vs. Commissioner of Cus. Kandla - 2014 (304) E.L.T. 279 (Tri. - Ahmd.)

3. During hearing, learned Counsel submitted that import of 25.175MT aluminum scrap 'Terse' has been made by the appellant under proper documents and on payment of duty. Both the PSICs are valid and therefore, they have not contravened any provision which could invite confiscation of impugned goods and imposition of penalty on the appellants. He also states that requirement of PSIC has been specified by DGFT vide Circular No. 16(RE-2010)/2009-2014 dated 04.02.2011 so that any hazardous material or unwanted items does not get imported alongwith scrap of ferrous or non-ferrous items. In case where PSIC is not provided, Revenue can clear the goods after conducting 100% examination of the goods to ensure that nothing objectionable is imported. In any case, actions taken by the appellant firm, its Director Shri Pramodkumar Ramanlal Agarwal and by Shri Vishal Gupta, Vice President of the indenting Company are bonafide and do

not call for confiscation of the goods and imposition of penalties. He reiterated various case laws relied upon to plead that the department has no case in the matter and requested to allow their appeals.

4. Learned AR in his submissions reiterated the findings of the lower authorities to press that the appellants have violated conditions imposed by DGFT which invite not only confiscation of goods but also imposition of penalties. He relied on the statements of Shri Dinesh Aneja, (Proprietor of M/s. WLSI, New Delhi), statements of Shri Pramodkumar Ramanlal Agarwal, (Director of the Appellant Company) and the statements of Shri Vishal Gupta, (Vice President of the Indenting firm M/s. Vistas Trading, New Delhi) wherein they accepted that PSIC No. 08186/K/D/107611 dated 27.06.2012 issued by M/s. Geo Chem Middle East, Dubai was without proper inspection of the goods at the load port. As regards, PSIC No. 08186/K/D/107611 dated 27.06.2012 issued by WLSI, it was stated that the goods were inspected by Mr. Jose who was not the authorised person/ Inspector for Dubai and thus, the said PSIC is also not valid/genuine. For these violations, the importer as well as those who were involved, are liable to penal action. He therefore, prays to uphold the orders of the lower authority and dismiss the appeals.

5. We have heard rival submissions. The appellant have imported Aluminum scrap 'Terse' from M/s. RKG International, FZE, Dubai through Indentor M/s. Vistas Trading, New Delhi.

5.1 As per Hand Book of Procedure 2015-20, para 2.54(b)(i) deals with import of waste and metallic scrap. It mandates submission of pre-shipment inspection certificate in specified format issued by any of the Inspection and Certification agencies to the effect that the consignment was checked for radiation level and scrap does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall give the value of background radiation level at that place as also the maximum radiation level on the scrap. Sub para (d) of this para specifies certain conditions for import of unshredded compressed and loose form of metallic waste, scrap. The responsibility and liability of PSIA, Importer and Exporter have been specified in para 2.56 as below:-

(a) In case of any mis-declaration in PSIC or mis-declaration in application form for recognition as PSIA, PSIA would be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended, in addition to suspension/ cancellation of recognition.

(b) The importer and exporter would be jointly and severally responsible for ensuring that the material imported is in accordance with the declaration given in PSIC. In case of any mis-declaration, they shall be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended.

(c) The scanned copy of the PSIC (in pdf format) shall have to be uploaded by the PSIA on DGFT website or emailed to DGFT (at psic-dgft@gov.in). The certificate shall be issued in prescribed form Appendix 2H.

(d) The PSIA will also be required to take photographs or make video of the inspection carried out, duly capturing the following activities/details:

(i) Photograph(s) or video clipping of the place of inspection with PSIA inspector (mandatory) and representatives of exporter /importer, if available (optional); with time, date of the inspection (at least 1 photograph or video clipping);

(ii) Photograph(s) or video clipping of the testing instrument(s) used for inspection;

(iii) Photograph(s) or video clipping of the process of stuffing of containers showing the container number (at least 1 photograph or video clipping per container)

(iv) Photograph(s) or video clipping of the sealing process (at least 1 photograph or video clipping per container).

5.2 As per above provisions, providing valid PSIC is the responsibility of both, the importer (Appellant) as well as the supplier of the goods (M/s. RKG International, FZE, Dubai). The sequence of events in this case are that the

supplier provided PSIC dated 27.06.2012 issued by WLSI, New Delhi to the importer as well as indenter but based on experience with Customs authorities, CHA advised to obtain PSIC issued by another Agency as PSIC issued by WLSI was not being accepted by the Customs. The importer therefore contacted the indenter who in turn requested the shipper to provide PSIC by any other approved inspection agency. M/s. RKG International, FZE, Dubai thereafter supplied PSIC dated 22.06.2012 issued by M/s. Geo Chem Middle East, Dubai which later on, was also found to be incorrect. Thus, both the PSIC certificates provided by importer for the imported Aluminum scrap were invalid.

5.3 The appellant relied on the decision in the case of **Alang Meta Exim Pvt. Ltd Vs. CC** (2015 (328) ELT 665 (Tri. Ahmd.) wherein it is held that the importer have taken precaution and produced pre-shipment inspection certificate from authorised agency and copy of contract with foreign supplier as per procedure prescribed by DGFT. They are not required to take any further precaution. Confiscation of waste and scrap and imposition of penalty not sustainable. They also quoted the decision of Hon'ble Gujarat High Court in the case of **Commissioner of Customs vs. Senor Metals Pvt. Limited** – 2009 (236) ELT 445 (Guj.) wherein it was held that Section 111(d) of the Act permits confiscation of goods improperly imported, namely, any goods imported : (i) contrary to any prohibition imposed by or under the Act, or (ii) contrary to any prohibition imposed by any other law for the time being in force. The former is not the case of Revenue. In so far as the latter is concerned, there is no prohibition against import of the goods in question. Paragraph No. 2.32 of the Handbook itself specifies this. Only, the import is subject to fulfilment of stipulated conditions which are to be complied with by the exporter. Non-compliance thereof may entail an importer to undergo 100% inspection of entire consignment. That would not tantamount to improper import of goods as required by Section 111 of Customs Act, 1962. Relying on the above decision of Hon'ble Gujarat High Court, CESTAT Chennai in the case of **CMA CGM Agencies (I) Pvt. Ltd Vs. Commissioner of Customs (Port-Import), Chennai** – 2016 (341) ELT 311 (Tri. Chennai) held that purpose of PSIC is to ensure that the consignment does not contain any types of arms, ammunition or other explosive material. As no such incriminating material was found in consignment, radiation level was not found in excess of neutral background,

non-compliance of the condition of import policy may entail 100% inspection of goods but would not tantamount to improper import of goods liable to confiscation under Section 111 of the Customs Act, 1962. Abetment was also not proved. Imposition of penalty under Section 112(a) was set-aside.

5.4 In the factual matrix, there is no sufficient evidence that the appellants have abetted in production of invalid PSIC to make import of prohibited goods by contravening Foreign Trade Policy. Therefore, relying on the above decisions, we allow the appeals filed by M/s. Palco Recycle Exchange Limited, Shri Pramodkumar Ramanlal Agarwal, (Appellant 2) and Shri Vishal Gupta, Vice President of M/s. Vistas Trading, New Delhi (Appellant 3) and set-aside the impugned order to the extent of confiscation of seized goods, imposition of Redemption fine and penalty on the above three appellants.

6. The appeals are allowed with consequential benefits, if any.

(Pronounced in the open court on 18.03.2026)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

(Satendra Vikram Singh)
Member (Technical)

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