

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH-COURT NO. 1**

**CUSTOMS APPEAL NO. 50914 OF 2021**

[Arising out of Order-in-Original No. 05/2020/M.K.SINGH/PR. COMMR/ICD-IMPORT/TKD dated 31.01.2020 passed by the Pr. Commissioner of Customs (Import), New Delhi]

**NITIN KHANDELWAL**

**.....APPELLANT**

Manager of M/s. Wide Impex  
2753/22, First Floor, Beadonpura,  
Karol Bagh, New Delhi-110005

Vs.

**PRINCIPAL COMMISSIONER, CUSTOMS  
(IMPORT)-ICD, TUGHLAKABAD, NEW  
DELHI-110020**

**....RESPONDENT**

**Appearance:**

Shri Bharat Bhushan and Shri Pratik Kumar, Advocates for the appellant

Shri Nikhil Mohan Goyal and Shri Rakesh Kumar, Authorised Representatives for the department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 51338 /2025**

**DATE OF HEARING : 05/06/2025**

**DATE OF DECISION: 23/09/2025**

**P. V. SUBBA RAO:**

1. This appeal assails the order in original dated 31.01.2020<sup>1</sup> passed by the Principal Commissioner of Customs (Import), ICD TKD to the extent that it imposes a penalty of Rs. 30,00,000/- under section 112 (a) of the Customs Act, 1962<sup>2</sup> and penalty of Rs. 30,00,000/- under section 114AA of the Act on Shri Nitin Khandelwal<sup>3</sup>.

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**1** Impugned order  
**2** Act  
**3** Appellant

2. Although the prayer in the appeal is to set aside the impugned order, the only decisions against the appellant are the two penalties. This appeal in Form CA 3 also only refers to the penalties and the appellant also made pre-deposit only taking into account the penalties imposed on it. The demand of duty, confiscation and penalties on M/s. Wide Impex<sup>4</sup>, the importer, were not included in Form CA 3 filed in this appeal.

3. We, therefore, proceed to decide the impugned order only insofar as it imposes penalties on the appellant.

4. The operative part of the impugned order has four parts A, B, C and D. Parts A, B and C reject the transaction values declared by the importer, re-determine the values of the goods, confirm differential duty, confiscate goods and impose penalties on the importer. Part D imposes penalties on the appellant. It reads as follows:

**ORDER**

**A. In respect of B/E No. 435561 dated 11.12.17-**

.....

**B. In respect of B/E No. 664028 dated 2.6.2018-**

.....

**C. In respect of past Bills of Entry filed from 13.08.2014 to 06.01.2018**

.....

**D. Penalty on Shri Nitin Khandelwal**

(xiv) I impose a penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs only) under Section 112(a) of Customs Act, 1962 and penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs only) under Section 114AA of Customs Act, 1962 on Sh. Nitin Khandelwal, Manager of M/s Wide Impex."

5. The facts of the case are that the importer filed Bill of Entry no. 435561 dated 11.12.2017 to clear goods imported by it and self-assessed the duty payable on them. Receiving

intelligence that the description and value of the goods were mis-declared in this Bill of Entry, officers of the Special Intelligence and Investigation Branch<sup>5</sup> of the Commissionerate examined the goods and found some goods were found in excess, some goods were not declared and the price of some goods appeared to be too low. Samples of some goods were also sent for testing to Central Revenue Control Laboratory<sup>6</sup> to determine the nature and composition.

6. Doubling the truth and accuracy of the declared values, summons dated 2.1.2018 were issued to the owner of the importer Shri Mayank Khandelwal<sup>7</sup>. He sent a reply dated 3.1.2018 stating that the documents sought in the summons were not available with him and that goods may be valued on the basis of the value of contemporaneous imports.

7. Continuing with the investigation, another summons dated 8.1.2018 was issued to Mayank and in response, the appellant, who is the elder brother of Mayank and also the Manager of the importer firm, appeared on 9.1.2018 with an authorization from Mayank and gave a statement under section 108 of the Act.

8. In his statement dated 9.1.2018, the appellant explained that he would visit China and place orders for goods on behalf of Wide Impex which were then sold to three persons Shri Prateek Jain, Rajnish Maurya and Shri Piyush; he would undervalue the goods by submitting fake invoices for the sake of

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**5** SIIB  
**6** CRCL  
**7** Mayank

customs clearance and the amount shown in these invoices would be remitted through bank. The remaining amount (difference between the actual price and the under-invoiced value) would be paid by the buyers Prateek Jain, Rajnish Maurya and Shri Piyush directly to the exporter.

9. He further explained that Shri Anuj Gupta would coordinate the export of goods from China and two invoices would be issued for each consignment—a genuine invoice showing the value of goods in RMB and a fake invoice showing the value of goods in USD which he would use for customs clearance. He further said that he had three email accounts in which he would receive the invoices viz. [nitin.khandelwal22@yahoo.com](mailto:nitin.khandelwal22@yahoo.com), [nitinkhandelwal22.nk@gmail.com](mailto:nitinkhandelwal22.nk@gmail.com) and [nitinji1983@gmail.com](mailto:nitinji1983@gmail.com). Invoices would be sent by the supplier from three email IDs, viz., [1303228470@qq.com](mailto:1303228470@qq.com), [sourcingleo@yahoo.com](mailto:sourcingleo@yahoo.com) and [anujgupta.29@gmail.com](mailto:anujgupta.29@gmail.com).

10. The appellant opened his email [nitin.khandelwal22@yahoo.com](mailto:nitin.khandelwal22@yahoo.com) on the computer installed in SIIB room voluntarily and took a print out of the original invoices in excel form which were received from [1303228470@qq.com](mailto:1303228470@qq.com) and put his signature on the printout. The data contained in the email and the excel sheets were collected by SIIB officers. The appellant gave his further statement on 17.07.2018 in which he re-affirmed that he had opened his email id while giving his statement on 19.01.2018 and took prints of the excel sheets which he had signed. He stated that the prices therein were on CIF basis.

11. Investigation also showed that the importer had filed another Bill of Entry No. 6646028 dated 2.6.2018 self-assessing duty. When the goods were examined, discrepancies were found between what was declared and what was actually imported. The actual invoice of this consignment was also found in the excel sheet provided by the appellant in respect of this Bill of Entry.

12. Goods in consignments were seized for mis-declarataion and they were provisionally released on bond.

13. Officers also investigated the past imports of goods by the importer and found correct invoice values in respect of some of the goods in the Excel Sheet submitted by the appellant during investigation. In respect of other goods, contemporaneous values of other imports were considered.

14. In all cases, the values in the Excel sheet were reckoned as FOB values and cost of transit and transit insurance was added on notional basis to arrive at the CIF values on which the duty was calculated.

15. After completing the investigation, Show Cause Notice dated 11.4.2017<sup>8</sup> was issued to the importer and to the appellant proposing to reject the declared transaction value and to re-determine the value as per the correct invoice values where they were available and based on contemporaneous imports where they were not available. It was proposed to recover the differential duty with interest and impose penalties. These culminated in the impugned order.

**Submissions on behalf of the appellant**

16. Learned counsels for the appellant made the following submissions:

- (i) The impugned order is illegal arbitrary and was passed without application of mind and should therefore be set aside.
- (ii) The impugned order was passed without giving an opportunity of personal hearing;
- (iii) It has been wrongly held in the impugned order that the appellant had knowingly filed false declarations in the Bills of Entry;
- (iv) The statement made by the appellant was retracted later.
- (v) The demand has been confirmed on the basis of fabricated and inadmissible statements and documents;
- (vi) Both the excel sheet produced by the appellant during the statement and the statement itself are not admissible as evidence;
- (vii) The Excel sheet was not accompanied by a mandatory certificate as per section 68B of the Evidence Act,1872 (appears to mean section 65B);
- (viii) The Adjudicating authority wrongly recorded that there was no retraction of the statement. The appellant retracted his statement before the learned Chief Metropolitan Magistrate after he was arrested.

- (ix) The values given in US\$ presented to the Customs should only be considered as invoices and not the RMB values found in the Excel sheets.
- (x) There was no mis-declaration of value of the goods and therefore, they were not liable to confiscation. Consequently, no penalty could have been imposed on the appellant.
- (xi) Penalty under section 114AA can be imposed only in case of mis-declarations in exports and not for mis-declarations on imports. Reliance is placed on the 27<sup>th</sup> Report of Stating Committee on Finance of Lok Sabha.
- (xii) Therefore, penalty under section 114AA could not have been imposed on the appellant.
- (xiii) The impugned order may be set aside and the appeal may be allowed.

### **Submissions on behalf of the Revenue**

17. Learned authorized representative for the Revenue made the following submissions:

- (i) This case is one of gross mis-declaration and undervaluation of imported goods by M/s. Wide Impex of which Mayank was the owner and the appellant was the manager and also the elder brother of Mayank.
- (ii) Suspecting undervaluation, summons were issued to the owner and instead the appellant appeared with an authorization from the owner

because he was the manager of the importer firm and was involved in the day to day functions of the importer.

- (iii) In his statement, the appellant said that they would get two sets of invoices- one for a lower value in USD which he would submit to customs and another for the actual value of the goods in RMB. They would send the remittance through banking channel as per the invoice with a lower value. The differential amounts would be paid to the overseas exporter directly by the persons to whom they supply the goods after import.
- (iv) The appellant also produced the EXCEL sheet giving the true values of the goods after downloading it from the appellant's email account.
- (v) Based on these values of the goods was re-determined taking into account the correct transaction values and differential duty was demanded with interest and penalties.
- (vi) The Excel Statement must be presumed to be true as per section 139 of the Customs Act.
- (vii) The appeal may be dismissed and the impugned order may be upheld.

### **Findings**

18. We have considered the submissions advanced by both sides and perused the records.

19. The appellant's submissions that the impugned order was passed without any application of mind and that it was passed without giving the appellant an opportunity of personal hearing are not correct. The impugned order recorded at length, in paragraphs 1 to 28, the facts of the case and the allegations in the SCN. It recorded in paragraph 29 that the appellant had not submitted any defence reply even after nine months of the issuance of the SCN. It is recorded in paragraph 30 that personal hearings were fixed on 3.9.2019, 25.9.2019, 17.10.2019, 27.11.2019 and 7.1.2020 but the appellant did not appear but sent letters that their advocate was engaged before the High Court or this Tribunal and sought adjournments on the first four dates. On 7.1.2020, the appellant sought further adjournment on the ground that the appellant was out of station. In our considered view, the appellant was provided sufficient opportunities of being heard. Thereafter, the impugned order discussed the evidence on the basis of which the allegations were made in the SCN in paragraphs 31 to 48 before passing the order in paragraph 49.

20. We also note that section 28(9) of the Act requires the proper officer to determine the duty payable if the notice is issued under section 28(4) of the Act within one year from the notice. If the noticee did not send any reply for nine months and also did not appear on any of the four opportunities which were given for personal hearing and kept seeking adjournments, the Commissioner cannot endlessly keep adjourning the matter. He was correct in deciding the matter based on the evidence available.

21. The appellant submitted that the Excel sheet on the basis of which the duty was recalculated was not admissible as evidence as per section 65B of the Indian Evidence Act which reads as follows:

**65B. Admissibility of electronic records:**

(1) Notwithstanding anything contained in this Act, **any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output)** shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -

(a) **the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information** for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) **during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer** in the ordinary course of the said activities;

(c) throughout the material part of the said period, **the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents;** and

(d) the information contained in **the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.**

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a

single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation: For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

22. As can be seen, Section 65B of the Evidence Act deals with the output of a computer. The excel sheet in question was not the output of a computer. It was neither taken from the appellant's computer nor was it taken from the computer of the SIIB of the Commissionerate. In fact, the excel sheet was in the email of the appellant. It was only printed using the computer and printer of the SIIB of the Commissionerate. Therefore, the information was on the servers of the email service provider, Google. Data in the gmail accounts of anyone is stored, as is well

known, in the massive servers of Google. The user of the gmail account has exclusive access to the data stored in his gmail account through his User ID and password. The information stored in any gmail account is, therefore, in the exclusive knowledge of the account holder, which, in the case of the Excel sheet was the appellant. The appellant had opened his email account and the Excel sheet, printed and signed on the copy of the printout. Nothing in section 65B of the Evidence Act would apply to this excel sheet because it was not taken out of any computer.

23. It has been submitted that in the impugned order, it has been wrongly held that the appellant had knowingly filed false declarations in the Bills of Entry. It has also been submitted that the appellant had retracted his statement later. It has also been submitted that the demand is made on the basis of fabricated documents. We have gone through the statement recorded on 09.01.2018 and the retraction of 21.02.2018. There are several details in his statement dated 09.01.2018 which can be only within the exclusive knowledge of the appellant such as his personal details, how his business was done, his email accounts, the name of his counterpart Anuj Gupta, email id's of Anuj Gupta, the email id on which he would receive invoices and other documents, the email ids to Anuj Gupta from which the documents should be sent, etc. None of these were specifically retracted in the retraction dated 21.02.2018. We, therefore, have no hesitation in accepting that the statement dated 09.01.2018 was valid and voluntary. It also needs to be pointed out that during the recording of his statement, Nitin also opened

his email account in the office of SIIB. It would have been impossible for anybody else because only the appellant knew his password. He explained about the documents in his email id including the excel sheets in question, took prints of the excel sheets under the documents signed them and presented them before the officers. Therefore, we have no manner of doubt about how the excel sheet came into possession of the department or its authenticity. It was given to the officers by Nitin taking a print out from his email account after signing.

24. The only information available with the investigating officers was the intelligence that the goods were undervalued and that they were mis-declared. The officers did not have any parallel invoices in the form Excel sheet. They were also not aware of the modus operandi of the appellant or the email accounts used by the appellant and the overseas suppliers to send the invoices. All these were in the exclusive knowledge of the appellant and it is he, who opened his email account using his user ID and password and printed the excel sheet and signed it. He also explained the differences between the two sets of invoices. In the retraction before the Ld. CMM, a month after making the statement, there was no alternative explanation of these facts. The submissions of the appellant that the demand was made on the basis of fabricated documents and that the appellant had retracted the statement deserve to be rejected.

25. The appellant submitted that only the values given in US \$ in the invoices submitted to the Customs along with the Bills of Entry must be considered and not the values shown in RMB in the

Excel sheet; that there was no mis-declaration of value of goods and therefore, there can be no confiscation. As we have already held in favour of the Revenue on the question of undervaluation and re-assessment based on the parallel invoices in the form of Excel sheet which was opened by the appellant from its own Gamil account, printed and submitted by the appellant. Therefore, these submissions deserve to be rejected.

26. Learned counsel also submitted that penalty under section 114AA can only be imposed for mis-declaration in exports and not for mis-declarations in imports. He relied on the 27<sup>th</sup> Report of Stating Committee on Finance of Lok Sabha.

27. We find that section 114AA reads as follows:

**"Section 114AA. Penalty for use of false and incorrect material.** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

28. A plain reading of the section 114AA shows that it provides for making, signing or using or causing to be made, signed or used any declaration or statement which is incorrect in the transaction of any business for the purposes of the Customs Act. Imports and filing of Bill of Entry are transactions of business under the Customs Act. Section 114AA would squarely apply to those transactions.

29. Learned counsel relied on the 27<sup>th</sup> Report of the Standing Committee of the Finance in support. We have examined it. The Committee had expressed concerns about

the introduction of an additional section 114AA as it was considered harsh. In response, the Ministry explained that this has been introduced consequent upon several cases of fraudulent exports for which no goods were being exported or papers being created claiming benefits under the scheme. After the Ministry's response, the Committee felt that the proposal to introduce Section 114AA was in the right direction but advised the Government to monitor the implementation of this provision with due care. Nothing in this report indicates that section 114AA is confined only to cases of export; it only states the background in which this provision was made. At any rate, any discussion during the Committee meeting cannot form the law. The law has to be read as it has been enacted by the Parliament. Nothing in the text of section 114AA shows that it applies only to exports and not to imports.

30. We have also examined the quantum of penalty imposed on the appellant under sections 112(a) and 114AA vis-a-vis the value of the goods confiscated and the duty confirmed.

31. The value of the goods confiscated under section 111 was Rs. 58,12,694/- (B/E No. 4355861 dated 11.12.2017) + Rs. 42,24,056/- (B/E No. 6648028 dated 2.6.2018). The value of the goods in the past Bills of Entry held to be liable to confiscation (though not confiscated because they were not available) was Rs. 35,01,33,953/-. These add upto Rs. 36,01,70,703/- [Rs.1,00,36,750 (goods confiscated)+ Rs. 35,01,33,953/- (goods held liable to

confiscation but not actually confiscated]. Considering these values, the consequential penalty of Rs. 30,00,000/- imposed on the appellant under section 112(a) is quite modest and does not require any interference.

32. Penalty under section 114AA cannot exceed five times the value of the goods in which there was mis-declaration. The total value of these goods is Rs. 36,01,70,703/- (as discussed in the above paragraph). Therefore, penalty of Rs. 30,00,000/- imposed on the appellant under section 114AA is quite modest and calls for no interference.

33. The impugned order is upheld insofar as it pertains to the appellant and the appeal is dismissed.

[Order pronounced on **23/09/2025** ]

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P. V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**