

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. I

CUSTOMS APPEAL NO. 50453 OF 2023

[Arising out of Order-in-Original No. 08/SB/COMMR/ACE/202 dated 18.10.2022 passed by the Commissioner of Customs, Air Cargo Complex(Export), New Delhi]

PANKAJ CHORDIA

C-4, Krishna Marg,
Shayam Nagar, Jaipur-302019

..... APPELLANT

VERSUS

**THE COMMISSIONER OF CUSTOMS,
AIR CARGO COMPLEX**

(Export), New Customs House,
Nr. IGI Airport, New Delhi
110037

.....RESPONDENT

WITH

**C/50454/2023, C/50455/2023, C/50456/2023,
C/51730/2023, C/50031/2023, C/51282/2023,
C/51313/2023, C/51314/2023, C/51315/2023,
C/51316/2023, C/51317/2023, C/51318/2023,
C/51449/2023, C/51450/2023, C/51533/2023,
C/51534/2023, C/51542/2023, C/51717/2023,
C/51728/2023, C/51746/2023.**

APPEARANCE:

Shri B.L. Narasimhan, Shri Anurag Kapur, Ms. Rubel Bareja, Shri Arun Goyal, Ms. Bharti Badesra, Shri Shivleen Pasricha, Shri Krishnendu, Shri B.Bhushan, Ms. Nidhi Gupta, Shri Shubham Singh, Shri R.M. Saxena, Shri B.L.Garg, Shri Anil Kumar and Ms. Shreya Dahiya, Advocates for the appellants

Shri Girijesh Kumar, Authorised Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

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

FINAL ORDER NO'S. 51218-51238 /2025

DATE OF HEARING: 17.07.2025

DATE OF DECISION: 27.08.2025

P.V. SUBBA RAO:

1. These 21 appeals assail the order-in-original dated 18.10.2022¹ passed by the Commissioner of Customs, Air Cargo Complex (Export), New Customs House, New Delhi under section 122 of the Customs Act 1962² deciding the proposals in the show cause notice dated 31.03.2008³ read with corrigendum dated 12.05.2008 and addendum dated 11.11.2008 issued by the Additional Director General⁴ of the Directorate General of Revenue Intelligence, New Delhi⁵. The SCN was issued to 62 noticees and the impugned order decided the proposals in the SCN against them. These appeals filed by 21 appellants are before us; they assail the impugned order insofar as it pertains to them. The details of these are as follows:

Bankers		
Sr. No.	Appeal No.	Party Name
1.	C/50453/2023	Pankaj Chordia Vs. Commissioner Of Customs-New Delhi
2.	C/50454/2023	Namit Gattani vs. Commissioner of Customs-New Delhi
3.	C/50455/2023	Paresh Taparai vs. Commissioner of Customs- New Delhi
4.	C/50456/2023	Narendra Singh vs. Commissioner of Customs- New Delhi
5.	C/51730/2023	K M Ganes vs. Commissioner of Customs (General), New Delhi
Chartered Accountant		
6.	C/50031/2023	Shri Kamlesh Khandelwal vs. Commissioner of Customs-New Delhi
Importers		
7.	C/51282/2023	SICPA India Pvt Ltd. vs. Commissioner of Customs, ACC (Export), New Delhi
8.	C/51313/2023	Baboo Ram Hari Chand vs. Commissioner of Customs-New Delhi
9.	C/51314/2023	KLJ Polymers & Chemicals Ltd. vs. Commissioner of Customs-New Delhi

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- 1 Impugned order**
2 Act
3 SCN
4 ADG
5 DRI

10.	C/51315/2023	Micro Systems vs. Pr. Commissioner of Customs (Air Cargo Import), New Delhi
11.	C/51316/2023	Garg Polyspin Pvt Ltd. vs. Pr. Commissioner of Customs (Air Cargo Import), New Delhi
12.	C/51317/2023	Shiva Metalloys International Limited vs. Commissioner of Customs-New Delhi (ACC Import)
13.	C/51318/2023	Kabeer Textile Pvt Ltd. vs. Pr. Commissioner of Customs (Import), New Delhi (ICD TKD)
14.	C/51449/2023	API Industrial Corporation vs. Pr. Commissioner of Customs, (Import), New Delhi (ICD TKD)
15.	C/51450/2023	API Associates Pvt Ltd. vs. Pr. Commissioner of Customs, (Import), New Delhi (ICD TKD.)
16.	C/51533/2023	Amba Steel vs. Commissioner of Customs, New Delhi (ACC Export)
17.	C/51534/2023	Aditya Infotech Limited vs. Commissioner of Customs, New Delhi
18.	C/51542/2023	FCC Clutch India Pvt Ltd. vs. Commissioner of Customs, ACC(Export), New Delhi
19.	C/51717/2023	Vintron Informatics vs. Commissioner of Customs, New Delhi (ACC Export)
20.	C/51728/2023	Alpha India Corporation vs. Commissioner of Customs, New Delhi
21.	C/51746/2023	Photo Deals vs. Commissioner of Customs, New Delhi

2. The appeals were filed broadly by three categories of persons/entities:

(a) **Bank officers of the Centurion Bank** on whom penalties have been imposed in the impugned order under section 114 (i) of the Act. The appeals filed by them are as follows:

- (i) **Customs Appeal No. 50453 of 2023**-Shri Pankaj Chordia vs. Commissioner of Customs, New Delhi.
- (ii) **Customs Appeal No. 50454 of 2023**-Shri Namit Gattani vs. Commissioner of Customs, New Delhi.
- (iii) **Customs Appeal No. 50455 of 2023**-Shri Paresh Taparia vs. Commissioner of Customs, New Delhi.
- (iv) **Customs Appeal No. 50456 of 2023**-Shri Narendra Singh vs. Commissioner of Customs, New Delhi.

(v) **Customs Appeal No. 51730 of 2023**-Shri K.M. Ganes vs. Commissioner of Customs (General), New Delhi.

These five appellants were employees of the Central Bank during the period and are aggrieved by the penalties imposed on them in the impugned order under section 114 (i) of the Act.

(b) **Chartered Accountant: Customs Appeal No. 50031 of 2023** is filed by Shri Kamlesh Khandelwal, Chartered Accountant on whom penalty was imposed under section 114 (i) of the Act.

(c) **Fifteen importers** who imported goods using the DEPB scrips purchased from others. They are aggrieved by the demand of duty of customs under section 125 (2) of the Act and imposition of penalties under section 112 (a) and (b) of the Act.

These are as follows:

(i) **Customs Appeal No. 51282 of 2023**- Shri Sicpa India Pvt Ltd. vs. Commissioner of Customs ACC (Export), New Delhi.

(ii) **Customs Appeal No. 51313 of 2023**-Baboo Ram Hari Chand vs. Commissioner of Customs, New Delhi.

(iii) **Customs Appeal No. 51314 of 2023**-KLJ Polymers & Chemicals Ltd. vs. Commissioner of Customs, New Delhi (ACC Export).

(iv) **Customs Appeal No. 51315 of 2023**- Micro Systems vs. Pr. Commissioner of Customs (Air Cargo Import), New Delhi.

(v) **Customs Appeal No. 51316 of 2023**- Garg Polyspin Pvt. Ltd. vs. Pr. Commissioner of Customs (Air Cargo Import), New Delhi.

(vi) **Customs Appeal No. 51317 of 2023** filed by Shri Shiva Metalloys International Limited vs. Commissioner of Customs, New DELHI (ACC Export).

- (vii) **Customs Appeal No. 51318 of 2023-** Kabeer Textile Pvt Ltd. vs. Pr. Commissioner of Customs (Import) New Delhi (ICD TKD).
- (viii) **Customs Appeal No. 51449 of 2023-**API Industrial Corporation vs. Pr. Commissioner of Customs, (Import) , New Delhi (ICD TKD.)
- (ix) **Customs Appeal No. 51450 of 2023-**API Associates Pvt Ltd. vs. Pr. Commissioner of Customs (Import), New Delhi (ICD TKD).
- (x) **Customs Appeal No. 51533 of 2023-**Amba Steel vs. Commissioner of Customs, New Delhi (ACC Export).
- (xi) **Customs Appeal No. 51534 of 2023-**Aditya Infotech Limited vs. Commissioner of Customs, New Delhi.
- (xii) **Customs Appeal No. 51542 of 2023-**FCC Clutch India Pvt Ltd. vs. Commissioner of Customs ACC (Export), New Delhi.
- (xiii) **Customs Appeal No. 51717 of 2023-** Vintron Informatics vs. Commissioner of Customs, New Delhi (ACC Export).
- (xiv) **Customs Appeal No. 51728 of 2023-**Alpha India Corporation vs. Commissioner of Customs, New Delhi.
- (xv) **Customs Appeal No. 51746 of 2023-**Photo Deals vs. Commissioner of Customs, New Delhi.

3. We have heard learned counsels for the appellants and learned authorized representatives for the Revenue and perused the records.

4. The facts of the case which led to the issue of the impugned order are that the DRI received intelligence that Shri Pawan Kumar Sharma and Shri Ajay Sharma of M/s J. Minakshi International, M/s JAY ESS International and Ms. J. Kanishka International were misusing export promotion schemes, namely,

drawback and DEPB by filing false declarations as per Annexure-I and Annexure-II of CBEC Circular No. 54/2001 dated 19.10.2001 in order to get higher All Industry Rate of drawback. The intelligence also indicated that the aforesaid exporters had filed duplicate Currency Declaration Forms⁶ in the banks, deposited foreign currency in their own accounts, and based on such deposits obtained Bank Realization Certificates⁷.

5. At this stage, it would be profitable to refer to the CBEC Circular No. 54/2001. This Circular was issued by CBEC on 19 October, 2001 to address the problems faced by merchant exporters in availing drawback on garments. It must be pointed out that drawback is a form of reimbursement of the taxes incurred in the goods which are manufactured and exported. Drawback is given either as per All Industry Rates⁸ or as per Brand Rates. There is also a scheme of drawback of customs duty if imported goods are re-exported which is not relevant for to these appeals. Since drawback is a reimbursement of taxes, viz., excise duty, service tax and customs duty incurred on the inputs, one way is to actually calculate the amount of taxes and duty suffered and fix a drawback rate accordingly. This method is called the brand rate. The manufacturer who exports goods applies for a brand rate for his product and the drawback directorate fixes the rate of drawback for his particular goods.

6 CDF
7 BRC
8 AIR

6. For vast majority of the general goods, however, rates are fixed based on the average incidence of duties and taxes on the inputs and such rates are called AIR for drawback. These are usually indicated as a percentage of the Free on Board⁹ value of the goods. The drawback schedule gives out the AIR for different categories of goods. Even if there is an AIR for goods, if a manufacturer had incurred more duties and taxes than what is provided for by the AIR, he may apply for a Special Brand Rate for his goods although an AIR is available.

7. The Circular No. 54/2001 deals with the AIR of drawback for garments. From 2001-02 Budget, readymade woven garments were subjected to central excise levy and the manufacturers had to pay duty of excise and could avail CENVAT credit. Considering the peculiar, decentralized nature of garments industry, special provisions were made whereby the merchants who got their garments produced by supplying raw materials to job workers would get registered and pay duty. If merchant manufacturer paid duty, he was entitled to avail CENVAT credit on inputs procured and used for garment production by the job workers also.

8. Manufacturers/ merchant exporters with small turnover below Rs. 1 crore who were not required to pay excise duty at all and therefore, could not take CENVAT credit. Thus, there were two categories of garment exporters - those who do not avail CENVAT credit and not pay duty and those who avail CENVAT

9 **FOB**

credit and pay duty. A higher rate of drawback was prescribed for people who did not avail CENVAT credit. It, therefore, became necessary for the customs officers to determine in each case based on the documents whether CENVAT credit was availed or it was not availed (and, therefore, higher drawback was admissible). This process of verification was becoming cumbersome. The Circular was issued to facilitate trade. It required the exporters to make self-declarations in Annexure I to the Circular and also produce a declaration by supporting manufacturer as per Annexure II to the Circular. Based on these declarations, drawback was to be sanctioned.

9. The case of DRI was that M/s J. Minakshi, M/s JAY ESS and M/s Kanishka were three exporters being run by Shri Pawan Kumar Sharma and Shri Ajay Kumar Sharma and Shri Karan Harsora and they had filed false declarations in Annexure I and II in order to avail excess drawback and they had also fraudulently obtained Duty Entitlement Passbook¹⁰ scrips from the Directorate General of Foreign Trade¹¹ on such exports. Based on this information, DRI conducted searches at various places, conducted inquiries, recorded statements of various persons of the exporters and came to the conclusion that the so called business premises of the exporters and their supporting manufactures were not actually so. Instead, the exporters bought goods from market and then exported them declaring them to be goods manufactured without availing CENVAT credit

10 **DEPB**

11 **DGFT**

in order to avail drawback as per higher AIR of drawback. Some inquiries were also conducted regarding the identity of the overseas buyers and they were also found to be non-existent in certain cases.

10. In view of the above, the conclusion of the DRI's investigation was that the three exporters - Minakshi, JAY ESS and Kanishka had mis-declared in Annexure I & II filed along with shipping bills and thereby availed ineligible drawback which was recoverable from them.

11. DRI also investigated the BRCs which the exporters had submitted and found that in many cases the foreign currency was deposited in their accounts by the exporters themselves claiming it to have been received through passengers' CDF. The currency so deposited was shown as remittances for the exports. Based on these deposits BRCs were issued by bankers.

12. DRI inquired into the CDF and the Foreign Exchange Management Regulation Act¹² and the RBI Regulations and came to the conclusion that the exporters had, in violation of the RBI guidelines and the FEMA Regulations, deposited the foreign currency and obtained BRCs. The conclusion of the DRI was that the banks officials were complicit in this exercise and in issuing the BRCs wrongly to the exporters.

13. It was further the conclusion of the DRI's investigation that the DEPB Scrips were issued by DGFT to the exporters based on

12 FEMA

the wrong declarations and wrongly obtained BRCs. Therefore, DRI concluded that the DEPB scrips were *ab initio*, null and void.

14. The DEPB scrips obtained by the exporters had already been sold to various importers who used them to import goods. DRI concluded that since the DEPB scrips were obtained by fraud, they were *ab initio* null and void and, therefore, the goods imported by the importers using these DEPB scrips were liable to confiscation under section 111 of the Act and, therefore, duty could be demanded under section 125(2) of the Act. It was also the conclusion of the DRI's investigations that the importers were liable to penalty under section 112.

15. Accordingly, ADG, DRI issued the SCN followed by the corrigendum and addendum. The proposals in these were confirmed by the Commissioner in the impugned order against the sixty three noticees of which 21 are before us today.

16. We, therefore, only proceed to decide in this order if the impugned order is correct insofar as it applies to these 21 appellants. The question of drawback is not before us in these appeals and the only questions to be decided are the confirmation of demand of duty and the imposition of penalties. The questions to be decided by us are as follows:

- (a) Whether the Commissioner was correct in holding in the impugned order that the DEPB scrips issued by DGFT were *ab initio* null and void and, therefore, duty has to be paid by the importers who used them.

- (b) Whether the duty could be demanded under section 125 (2) of the Act.
- (c) Whether penalty could be imposed on the importers under section 112.
- (d) Whether the Commissioner was correct in concluding that the BRCs were issued fraudulently by the bank officials in violation of FEMA Regulations and the Regulations of the RBI.
- (e) Whether the bank officials were liable to penalty under section 114(i).
- (f) Whether the Chartered Accountant was liable to penalty under section 114(i) of the Act.

DEPB Scrips

17. The proposal in the SCN and the decision in the impugned order is that the DEPB scrips were *ab inito* null and void. However, these scrips were issued neither by the Commissioner who adjudicated the matter nor by the ADG DRI who issued the SCN. They were issued by the DGFT. If at all, anything was found during the investigation by DRI which led it to conclude that the DEPB scrips were obtained from DGFT through fraud or mis-declaration, the proper course of action would have been to refer the matter to DGFT who could have taken a decision on whether the scrips were correctly issued or not. Nothing in the Customs Act gives either the ADG DRI or the Commissioner of

Customs or any other Customs Officer the power to declare the DEPB scrips issued by the DGFT null and void.

18. The Foreign Trade (Development and Regulations Act, 1992)¹³ and the Rules made thereunder and the Foreign Trade Policy¹⁴ also do not give either the DRI or the Commissioner of Customs the power to nullify or negate any scrips issued by the DGFT. Neither ADG, DRI who issued the SCN nor the Commissioner of Customs who passed the impugned order has any appellate or revisionary jurisdiction over the scrips or licences issued by the DGFT.

19. This issue was discussed at length by a bench of this Tribunal in **M/s. Apar Industries Ltd. vs Commissioner of Customs (Export Promotion), Mumbai**¹⁵ and it was observed:-

"13. The issue, therefore, that would arise for consideration is as to what will be the customs duty liability on the goods imported by either the original scrips holder or the transferee of the scrips on the strength of such DEPB scrips issued by DGFT in the following situations:

- (i) Where the DEPB scrips have been validly issued by the licensing authority and the same are valid on the date of import of the goods even though the DEPB scrip had been obtained through mis-representation or producing fraudulent/fake documents before the licensing authority;
- (ii) Where the import has been effected on the strength of DEPB scrips which have not actually been issued by the licensing authority, but have been found to be forged or fake; and
- (iii) Where the DEPB scrips issued by the DGFT, even if based on mis-representation or production of

13 FTDR Act

14 FTP

15 Customs Appeal No. 594 of 2004 decided on 13.5.2025

fraudulent export documents have been cancelled by the licensing authority after the imports were effected.

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26. **All the aforesaid decisions clearly hold that a licence/scrip obtained by fraud is not void ab-initio and is merely voidable.** The concept that fraud vitiates everything would not be applicable if the licence/scrip had been obtained for valuable consideration without any notice of fraud having been committed by the original licensee/scrip holder while obtaining licence/scrip. **The decisions also hold that cancellation of the scrips after the imports had been made on the basis of the scrips would not have any impact on the import as at that point of time the scrips were valid.**

31. **What, therefore, transpires from the aforesaid decisions is that wherever the licensing authority has issued the licence/DEPB scrip on the basis of which the exemption is sought from customs duty, either by the original licence holder or by the transferee, even if the licence/DEPB scrip have been obtained by producing fraudulent/fake export documents or bank documents, then during the validity of the licence/scrip the exemption cannot be denied and the goods cannot be confiscated. This would be so, even if the licence is 4 CUS/4 OF 2007 cancelled by the licensing authority subsequently after the imports have been effected. What is relevant is a valid licence/DEPB issued by the licensing authority and presentation of the same at the time of import of the goods and at the time of filing the Bill of Entry.**

32. The position would be totally different if the licence/DEPB scrip or TRAs have not been issued by the DGFT and the same have been found to be fake or forged. In such a situation, customs duty exemption would not be available either to the original licence holder or to the transferee importer”.

(emphasis supplied)

20. Therefore, even if the DEPB scrips were obtained by fraud or mis-representation, they were voidable by the DGFT which issued them; they were not void. DGFT did not void them. DRI decided on its own that they were *ab intio* null and void and issued the SCN and the Commissioner agreeing with it confirmed the demand of duty from the importers. Clearly, both the SCN as well as the impugned order were issued without authority of law in declaring the scrips issued by DGFT.

The demand of duty under section 125 (2)

21. Section 125 of the Act provides for an option to pay fine in lieu of confiscation of goods. The adjudicating authority who confiscates the goods under the Act may, in case of prohibited goods, and shall, in case of other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay a fine in lieu of such confiscation. The amount of fine (commonly known as redemption fine) cannot exceed the market price of the confiscated goods, less, in case of imported goods, the duty chargeable thereon. The term 'imported goods' in the Act means goods which are brought into India from a place outside India but does not include goods which have been cleared for home consumption by the proper officer. In other words, if the goods which have been confiscated were imported and not yet cleared for home consumption, the redemption fine cannot exceed the market price of the goods minus the duties chargeable on the goods. If the goods were already cleared for home consumption, they will no longer be imported goods and the redemption fine cannot exceed the market price. In addition to the redemption fine, if any duty or other charges are payable on such goods, the person redeeming the goods by exercising the option under this section shall also have to pay such duties and charges as per section 125. This section reads as follows:

"125. Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner

of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation. - For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received."

22. As can be seen section 125(2) of the Act is not a section under which duty can be demanded. Duty can be demanded only under section 28 of the Act. Section 125 only requires the adjudicating authority to provide an option to pay fine in lieu of confiscation. It is open to the owner of the goods, either to take this option or not. If he opts for redemption, in addition to the redemption fine, he also has to pay the duties, if any payable. If he does not opt for redemption, the confiscation of the goods will be absolute and no duty is payable on them by the owner.

23. It must be remembered that as per section 12 of the Act duties of Customs shall be levied on goods imported into or

exported into India. Sub section (2) of section 12 further clarifies that this section shall also apply to goods belonging to Government as it applies to the goods not belonging to Government.

24. Therefore, the charge of duty of customs is not on an individual but it is on the goods and the owner of the goods has to pay the duty. Where the ownership of goods changes, the liability to pay duty also shifts along with the ownership. For instance, if goods are imported into India and are sold by the person who imported to another person before such goods cross the customs frontiers, such as, while on the high seas or in the port or in the Customs bonded warehouse, the ownership of the goods shifts to the buyer and so will the liability to pay customs duty. It often happens that goods are imported and stored in a customs bonded warehouse and then traded from one person to another and further to a third person and so on. The person who finally decides the goods to clear them for home consumption has to pay the duty as the owner of the goods.

25. If the goods are confiscated, as per section 126 of the Act, the property will then vest in the Central Government and the officer adjudging confiscation shall take and hold possession of the confiscated goods. Section 126 reads as follows:

"126. On confiscation, property to vest in Central Government.

(1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods."

26. In other words, once the goods are confiscated, they became the property of the Central Government and, therefore, the duty liability on them also shifts to the Central Government. Similarly, if goods are imported by the Central Government, duty on them also must be paid on the Government itself. If the goods are confiscated, they are usually auctioned and appropriate duty is calculated and credited as duty and remaining amount as credited as sale proceeds of the goods.

27. What section 125 contemplates is the situation where the goods are confiscated by the officer thereby vesting them in the Central Government and thereafter the owner of the goods, exercises an option to pay fine in lieu of confiscation. Once he pays the redemption fine under section 125, the goods can be redeemed and will no longer be the property of the Government but will become the property of the owner who redeemed the goods. In such case, if the goods are still to be cleared or some duty and other charges are payable on such goods, as per section 125 (2), the owner of such goods will have to also pay the duty.

28. There are some situations when redemption fine is recoverable from the person without he actually opting for such redemption. This happens in situations when goods were initially seized but were provisionally released on bond to the owner of the goods pending adjudication by the adjudicating authority. In such cases, the terms of the bond include that if the goods are

finally confiscated, the owner of the goods would pay a fine in lieu of such confiscation. Therefore, in such an adjudication order, fine in lieu of confiscation is imposed on owner of the goods.

29. In the impugned order, all the importers had imported the goods and had also cleared them from the customs by filing Bills of Entry using the DEPB scrips. No goods were seized or seized and provisionally released or confiscated. Therefore, no redemption fine was imposed on any of the importers. Therefore, the demand of duty under section 125 (2) in the impugned order is clearly without any authority of law as a plain reading of the section makes it evident that the demand of duty could not be confirmed under section 125 (2).

Penalty under section 112 on the importers.

30. The Commissioner held that the imported goods were liable to confiscation under section 111 and imposed penalties under section 112 (a) and (b) on the importers. He held that the imported goods were liable to confiscation under section 111 (d) and (o) of the Act. Section 111(d) provides the confiscation of the goods which were imported or attempted to be imported or were brought within Indian customs borders for the purposes of being imported contrary to any provision imposed by or under the Act or any other law for the time in force. There is no evidence that the imported goods were prohibited under the Customs Act of any other law. The entire case of the department

is that the goods were imported and duty was paid using DEPB scrips issued by DGFT based on some false representation by the exporters. Therefore, by no stretch of imagination would section 111(d) would apply to these imports. Section 111(o) provides for confiscation of goods exempted, subject to any condition, from duty or any prohibition on import thereof under this Act or any other law subject to some conditions and the conditions in respect of them were not observed. The imported goods were exempted from duty subject to the condition of debit of the DEPB scrips. These scrips were validly issued and were correctly used by the importers. Therefore, there is not an iota of evidence that the importers had violated any conditions of exemption. In fact, they had purchased the DEPB scrips in good faith. The customs officers who cleared the goods also must have also accepted the DEPB scrips in good faith. At any rate, the DEPB scrips were validly issued by the DGFT and neither the Commissioner nor the DRI has the power to overrule the decision of the DGFT and hold that the DEPB scrips were *ab initio* null and void. Therefore, the order of the Commissioner that the imported goods were liable to confiscation under section 111(d) and (o) (although he did not actually confiscate the goods or impose a redemption fine) cannot be sustained and deserves to be set aside. Consequently, the penalties imposed on the importers under section 112 (a) and (b) also cannot be sustained and, therefore, they need to be set aside.

Bank Realization Certificates

31. It is the finding of the Commissioner and the allegation in the show cause notice that the exporters had obtained BRC from the banks without actually receiving the remittances through the banking channels. Instead, the exporters themselves had deposited the foreign currency in their own bank accounts and obtained the BRC. The foreign currency was deposited, according to the SCN, under the cover of several CDFs by the exporters.

32. At this stage, it would be pertinent to discuss what a CDF or the currency declaration form is. As per the FEMA, the Reserve Bank of India has the power to regulate the movement of the foreign currency into and outside India. RBI issued Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 for the purpose. As per Regulation 6 of these Regulations, Foreign currency can be brought into India by persons entering India in small amounts. However, if the amount of foreign currency brought into India exceeds US \$ 10,000/- or its equivalent, the person has to file a CDF before the Customs officer while entering India and the declaration in the CDF shall be certified by the Customs Officers after verifying the currency which was brought into India. When such a person wants to convert the foreign currency into Indian currency, he has to present the CDF and the currency before the bank. If he does not want to convert all his foreign currency into Indian currency, he can take back the foreign currency which was not converted while leaving India. Thus, the CDF is a form under the RBI Regulations and certified by the Customs Officers.

33. The allegation in the SCN and the finding in the impugned order is that the foreign currency imported under the CDFs can only be used as remittance for exports if such currency is brought into India by either the overseas importer or his employee. Currency imported by any other passenger under the CDF cannot be accounted as remittance towards an export. According to the SCN and the impugned order, the exporters had wrongly deposited the foreign currency imported under cover of various CDFs of various passengers in their accounts and accounted them as remittances for their exports. The bank officials, in violation of the regulations of Reserve bank of India, accepted such foreign currency deposits into the accounts of the exporters and issued BRCs as on the basis of such deposits. Therefore, according to the SCN and the impugned order, the BRCs were wrongly issued by the bank officials. It is for this reason that penalties were imposed on bank officers Shri Pankaj Chordia (C/50453/2023), Shri Namit Gattani (C/50454/2023), Shri Paresh Taparia (C/50455/2023), Shri Narendra Singh(C/5-456/2023), Shri K.M. Ganes (C/51730/2023) under section 114(i).

34. We do not find any provision in the FEMA or the rules and regulations made thereunder as per which either the ADG, DRI or the Commissioner of Customs or any other customs officer has the power to determine the correctness or otherwise of the BRCs issued by banks. If DRI had found in its investigation that BRCs were wrongly issued by the officials of the bank violating the guidelines/rules issued by RBI, it could have referred the matter

to the RBI to consider and take appropriate action and also determine whether the BRCs issued by the banks were valid as per RBI guidelines or otherwise.

35. Instead, the ADG DRI and the Commissioner of Customs assumed the power to determine if the BRCs were correct or not without any authority of law. A few illustrations will make the position clear.

36. If, during the course of investigation of any case, the SHO of a Police Station, realizes that someone had smuggled gold into India, it is his duty to transmit that information to the customs authorities for appropriate action. He cannot step into the shoes of the Assistant Commissioner of Customs and confiscate the gold.

37. Similarly, if a Bank Manager, while processing papers related to an import, finds that the customs officers had cleared the goods in the Bill of Entry based on some mis-representation by the importer say, a wrong invoice, he can pass on that information to the Customs Officer for appropriate action. However, he cannot nullify or negate the clearance of the Bill of Entry by the Customs Officer.

38. We are fully conscious of the fact that the Customs Act also provides for actions in some cases where the violation was of some other law and in such cases, the customs officers have to decide if some other law was violated and take consequential action under the Customs Act. For instance, as per section 2(33)

of the Act, '**prohibited goods**' means any goods the import or export of which is **subject to any prohibition under this Act or any other law for the time being in force** but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. Section 111 makes several categories of imported goods liable to confiscation. The relevant extract of the section is as follows:

"111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an 1[arrival manifest or import manifest] or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;”

39. Therefore, the customs officers have to determine if the prohibition under some other law was violated and accordingly take action under section 111. For instance, if someone imports arms and ammunition without a licence, or imports some ozone depleting substances whose import is prohibited, the customs officers, knowing the import of the goods is prohibited under the relevant Act, can take action under section 111. However, this power of the Customs officers does not extend to determining if the actions taken by the officers empowered under those laws is correct or otherwise. For instance, if some goods can be imported only on a licence or a No Objection Certificate issued by any authority which the importer did not have, the customs officers

can take action. However, it is not open to the Customs officers to question the licence or the NOC issued.

40. An illustration should make the line of distinction clear beyond any doubt. The traffic policeman is empowered to act against violators of traffic rules. These rules forbid one from driving without a valid licence. If a policeman finds someone driving without a licence, he can and must take action. However, if the person has a valid driving licence issued by the Road Transport Authority, it is not open to the policeman to question the decision of the RTA who issued the driving licence, even if the policeman is of the opinion that the person does not know how to drive and therefore, the RTA should not have issued a driving licence. Or, if the policeman finds that the driving licence was obtained by some mis-representation, it is not open to the policeman to hold the driving licence issued by the RTA *ab initio null and void*.

41. In view of the above, we find that the ADG, DRI who issued the SCN and the Commissioner who passed the impugned order acted without any authority of law in holding that the BRCs were not valid or that they were issued on account of fraud or mis-representation.

Penalty Under Section 114(i) on the Bank Officers.

42. Five appeals are of the Bank Officials on whom penalties were imposed by the Commissioner under section 114(i) on the ground that they had done or omitted certain actions which

rendered goods liable for confiscation under section 113. The specific action of the bank officers is the issuance of BRCs violating RBI regulations. This penalty cannot be sustained, firstly for the reason that the ADG, DRI who issued the SCN or the Commissioner who issued the impugned order had no authority of law to decide the validity of the BRCs. Secondly, as per section 113 certain export goods are liable to confiscation and not exported goods. Export goods, as per section 2(19) of the Act, means any goods which are taken out of India to a place outside India. In other words, they are goods which are yet to be exported. The goods which have already been exported are not export goods as per section 2(19). Therefore, such goods are not liable to confiscation under section 113. In this case, even as per the allegations in the SCN, the goods had already been exported. Remittance for the goods so exported comes much at a later date. Goods will not become liable for confiscation under section 113 after they have been exported even if the remittance for the goods so exported have not been received or have not been received correctly. Therefore, the goods which have already been exported cannot be confiscated at all. Since section 114 of the Act provides for penalties for actions and omissions which render the goods liable to confiscation, the penalty under section 114 also cannot be imposed. We, therefore, find that the penalties imposed on the bank officers under section 114(i) cannot be sustained and deserve to be set aside.

Penalties on the Chartered Accountant Shri Kamlesh Khandelwal (Customs Appeal No. 50031/2023)

43. For the reasons mentioned above, penalty under section 114(i) also cannot be sustained on the Chartered Accountant Shri Kamlesh Khandelwal.

44. In view of the explicit legal position as discussed above, it is not necessary to consider various other submissions made by the learned counsels for the appellants. The impugned order insofar as the appellants in these appeals are concerned, cannot be sustained.

45. **To sum up:**

- (a) The DEPB scrips issued by the DGFT cannot be held *ab initio* null and void by the DRI or any other Customs Officers. The proposal in the SCN by the ADG DRI and the finding of the Commissioner in the impugned order on this count are without any authority of law either under the FTDR Act or under the Customs Act or under any other law.
- (b) No demand of duty can be confirmed under section 125(2) of the Act in the facts of the case because there was no confiscation of the goods nor was any option given to redeem any confiscated goods nor did the importers opt for any such redemption. The confirmation of the demand under section 125(2) in the impugned order is without any authority of law.

- (c) Penalty under section 112 can be imposed for acts or omissions which render the goods liable to confiscation. The imported goods were not prohibited goods and, therefore, they were not liable to confiscation under section 111(d) and they were also not liable to confiscation under section 111(o) because there was no violation of the conditions of any Exemption Notification. The goods were imported under DEPB scrips which were presented at the time of import. Therefore, the penalty imposed on all the importers under section 112 cannot be sustained.
- (d) Bank realization certificates are issued by the banks as per the guidelines of the RBI under the FEMA. The ADG, DRI who issued the show cause notice, and the Commissioner who passed the impugned order have wrongly assumed that they had the power to determine the correctness of the BRCs issued by the banks or otherwise. They had no such power under FEMA or under the Customs Act or under any other law.
- (e) The penalties imposed under section 114(i) on the bank officers and the Chartered Accountant are on the basis of the finding that the exported goods were liable to confiscation under section 113(d) and (i). As per section 113, only export goods were liable to confiscation and not goods which were already exported. Any receipt of foreign exchange is an event subsequent

to the export of the goods and cannot render the goods liable to confiscation under section 113(d). By the time the bank realization certificates are issued, the goods were already exported and they were not liable for confiscation under section 113. Therefore, the penalty imposed on the bank officers and the CA under section 114 cannot be sustained and needs to be set aside.

- (f) In view of the above, all appeals are allowed and the impugned orders insofar as it pertains to these 21 appeals are set aside. The appellants will be entitled to the consequential relief.

[Order pronounced on **27.08.2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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