

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

PRINCIPAL BENCH- COURT NO. – I

**CUSTOMS APPEAL NO. 51341 OF 2025**

(Arising out of order-in-appeal No. CC(A) Cus/D-II/TKDE/18/2025-26 dated 30.04.2025  
passed by Commissioner of Customs (Appeals), New Delhi)

**Commissioner Of Customs** .. **APPELLANT**  
**ICD TKD, New Delhi**  
Inland Container Depot, Tughlakabad,  
New Delhi -110020.

*VERSUS*

**M/s Om Udyog** .. **RESPONDENT**  
E-403, Phase VI, Focal Point,  
Ludhiana  
Punjab - 141010

**WITH**  
**CUSTOMS STAY APPLICATION NO. 51355 OF 2025**  
(ON BEHALF OF THE DEPARTMENT)

**APPEARANCE:**

Shri Rajesh Singh, Authorized Representative for the Revenue  
Shri Prem Ranjan Kumar, Advocate for the Respondent

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**  
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 51793/2025**

Date of Hearing : 20.11.2025  
Date of Decision : 26.11.2025

**P V SUBBA RAO**

Revenue has filed this appeal to assail the order dated 30.4.2025<sup>1</sup> passed by the Commissioner of Customs (Appeals)<sup>2</sup> allowing the appeal filed by M/s. Om Udyog<sup>3</sup> and setting aside the order dated 1.8.2024 passed by the Joint Commissioner of Customs with consequential relief to the respondent. The Joint Commissioner had, in his order, decided the proposals

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- 1. Impugned order**
  - 2. Commissioner (Appeals)**
  - 3. Respondent**

made in the show cause notice dated 24.7.2024 <sup>4</sup> served upon the respondent.

2. The respondent had filed four Shipping Bills all dated 7.10.2023 to export readymade garments such as Men's Jacket knitted made of cotton, Men's Polo Shirt Knitted made of cotton and Men's Pullover Knitted made of Cotton to Dubai, UAE. On the basis of some information, officers of the Customs Preventive put the goods on hold and examined them on 17.10.2023 under a Panchnama and found the goods were as per the packing list, invoice and shipping bills but it appeared to the officers that they were overvalued. Hence, they were detained under a detention memo dated 17.10.2023 under section 110 of the Customs Act, 1962 <sup>5</sup> and investigation was conducted. They also drew samples of the garments and sent them for testing to the Central Revenue Control Laboratory<sup>6</sup>.

3. On verification by the jurisdictional GST officers, both the respondent and its supplier M/s. Mahajan Fabrics Pvt. Ltd. were found to existing and operating at their registered premises.

4. However, as the officers felt that the goods were *prima facie* overvalued, they conducted a market enquiry and re-determined their value as per rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007<sup>7</sup>. The market enquiry was conducted in the presence of the owner of the Respondent and the G card holder of its Customs broker.

5. On tests by CRCL, the fabric of the jackets was found to be a blend of Polyester and cotton while they were declared in the shipping bills to be

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4. SCN

5. Act

6. CRCL

7. Valuation Rules

made of cotton. As a result, the serial number of the Drawback Schedule and the refund of State and Central taxes and Levies (ROSTCL) which would apply to the export garments were found to be different than those claimed. During investigation, the proprietor of the Respondent indicated that he had no objection to the report of the CRCL. The detained goods were, on a request by the respondent, allowed to be exported on execution of a bond.

6. After completing the investigation, the SCN was issued to the respondent. After considering the submissions made in defence by the Respondent and giving an opportunity of being heard, the Joint Commissioner passed order dated 31.7.2024 in which he:

- i) Rejected the declared FOB value of Rs.10,88,05,179/- in the four shipping bills and re-determined the FOB value as Rs. 1,20,57,600/- under rule 6 of the Valuation Rules.
- ii) Re-determined the benefits of Drawback and ROSCTL payable based on the revised value of the exported goods and also based on the revised serial number of the Drawback and ROSTCL schedules for the reason that the goods were made of blended fabrics and were not made of cotton as declared.
- iii) Ordered confiscation of the export goods valued at Rs. 1,20,57,600/- (re-determined value) under sections 113 (i), 113 (ia) & 113 (ja) of the Act but gave the respondent an option to redeem the goods in lieu of confiscation on payment of redemption fine of Rs. 3,00,000/.
- iv) Imposed penalty of Rs. 2,00,000/- on the respondent under section 114 (iii) of the Act and Rs. 2,00,000/- under section 114AA of the Act.
- v) Appropriated an amount of Rs. 2,00,000/- already deposited by the Respondent against the above amounts.

7. Aggrieved, the appellant appealed to the Commissioner (Appeals) on the following grounds:

- (a) The confiscation of the goods without seizure is illegal and unsustainable in law.
- (b) The department had not followed the basic principles of valuation in re-determining the value under the Valuation Rules.
- (c) The adjudicating authority erred in imposing redemption fine under section 125 since the goods were not available for confiscation at all.
- (d) The adjudicating authority erred in imposing penalty under section 114AA as no fraudulent exports were shown on papers.

8. The Commissioner (Appeals) decided as follows:

- a) Since the goods were detained under a detention memo and were not seized under section 110, they could not be confiscated under section 113. Confiscation cannot be an action independent of seizure. Since there was no seizure and only a detention through a Detention Memo, the confiscation under section 113 was not correct. Seizure must be done only on reason to believe which is duly documented.
- b) Since the confiscation fails, the penalty under section 114 AA 'which is contingent upon the confiscation' also fails.
- c) Since the market enquiry was only on a verbal statement and no other corroborative evidence, the re-determination of the value was not sustainable. Further, the Bank Realisation Certificates<sup>8</sup> were obtained by the respondent covering the full value of the goods as declared in the Shipping Bills. No evidence was produced by the department to show that the invoices were fake or fabricated or that any other relationship existed between the exporter and the overseas buyer which influenced the price.
- d) Therefore, set aside the re-determination of the value, confiscation of the goods, the redemption fine and penalties imposed by the Joint Commissioner and allowed the appeal of the Respondent with consequential relief.

9. The Commissioner (Appeals) did not discuss or give any finding on the nature of the fabric being different from what was declared and consequently the serial number in the Drawback Schedule and the ROSTCL schedule being changed. She also did not discuss about the penalty under section 114 (iii).

10. The Commissioner (Appeals), however, set aside the entire order of the Joint Commissioner.

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

11. Shri Rajesh Singh, Learned Authorised representative for the Revenue made the following submissions:

- i) The Commissioner (Appeals) erred in holding that the goods cannot be confiscated without seizure under section 110 of the Act.
- ii) Detention of the goods amounts to seizure under section 110 as held by the Madras High Court in **K. Steamship Agencies Pvt. Ltd. versus Balaji Dekors<sup>9</sup>**.
- iii) The Commissioner (Appeals) erred in holding that detention does not fulfil the requirement of recording 'reason to believe' under section 110 because the detention memo clearly indicates the reason for detention.
- iv) The Commissioner (Appeals) failed to consider that the goods were detained and provisionally released and allowed to be exported on execution of a bond and under such circumstances, the redemption fine can be imposed in lieu of confiscation. Reliance is placed on the judgment of the Supreme Court in **Weston Components Ltd. versus Commissioner of Customs, New Delhi<sup>10</sup>**.
- iv) The Commissioner (Appeals) erred in setting aside the re-determination of the FOB value of the goods under rule 6 of the

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9. (2024) 22 Centax 212 (Mad.)

10. 2000 (115) E.L.T. 278(S.C.)

Valuation Rules based on market enquiry as the proprietor of the respondent as well as the representative of the Customs broker were present during the market enquiry. Reliance is placed on the judgment of the Supreme Court in **Om Prakash Bhatia** versus **Commissioner of Customs, Delhi**<sup>11</sup> in which it was held that mode of determining the value under section 14 must be followed even if no duty was payable and if the value was mis-declared, it would be violation of Foreign Exchange Regulation Act, 1973 and hence such goods would be liable to confiscation under section 113.

- v) The Commissioner (Appeals) erred in relying on the BRCs as the receipt of BRCs does not validate the declared value.
- vi) The Commissioner (Appeals) erred in not discussing the composition of the fabric as revealed during test by CRCL and the consequential change in the serial number in Drawback and ROSCTL.
- vii) The impugned order may be set aside the appeal may be allowed.

### **Submissions on behalf of the Respondent**

12. Shri Prem Ranjan Kumar, learned counsel for the Respondent vehemently supported the impugned order and submitted as follows:

- i) To re-determine the value, the declared value must, in the first place, be rejected under rule 8 of the Valuation Rules. This rule requires the officer to first have a reason to doubt the truth or accuracy of the declared value and if he entertains such a doubt, he should call for further information and on receiving such information, if he still has a reasonable doubt, he can reject the transaction value. The Joint Commissioner or the proper officer did not follow this procedure to reject the transaction value and hence the re-determination of the value under rule 6 of the Valuation Rules which is contingent upon rejection under rule 8 cannot be sustained.

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**11. 2003 (155) E.L.T. 423 (S.C.)**

- ii) The department had no goods of like value and kind exported at or about the time of export in a comparable commercial quantity whose values were quite different. Therefore, the allegation of the mis-declaration of value cannot be sustained.
- iii) During investigation, the officers had conducted enquiries with the respondent's supplier of goods who confirmed that the goods were supplied at that price. This statement was simply ignored by the Joint Commissioner.
- iv) At the other end, after the goods have been exported, the overseas buyer had remitted foreign exchange as per the declared values and the bank has issued BRCs. Therefore, there was no ground whatsoever to either reject the transaction value or to re-determine the value.
- v) The appeal filed by the Department may be dismissed.

## **Findings**

13. We have considered the submissions advanced by both sides and perused the records and we proceed to decide the issues.

### **Rejection of the FOB value and it's re-determination under rule 6 of the Valuation Rules**

14. Free on Board (FOB) value is the value at which goods are sold on terms that the liability of the seller ends once the goods are put on board the ship or aircraft. All risks and costs thereafter on transport, transit insurance, etc. are on the buyer's account. This is one of the INCOTERMS (international commerce terms) which explains the rights and liabilities of the buyers and sellers. In other words, it is the transaction value of the goods.

15. The transaction value (FOB value) is also the value of the export goods as per section 14 of the Act and the Valuation Rules unless the proper officer

rejects the transaction value and if he does so, he can re-determine the value under the Valuation Rules.

16. It is possible that an exporter may mis-declare the FOB value-say, he declares it as Rs. 10,00,000/- when documentary evidence shows that the FOB value was only Rs. 5,00,000/-. Such a mis-declaration is a serious offence and action must be taken against the exporter under the relevant provisions.

17. It is also possible that there is no evidence that the exporter had mis-declared the FOB value but the officer doubts the truth or accuracy of the declared FOB value and rejects it and re-determines the value following some other method. In such a case, while the transaction value (FOB value) between the buyer and the seller will not change, value under section 14 will not be the transaction value but it will be some other value determined by the officer. It would be profitable to read section 14 of the Act and the Export Valuation Rules to fully examine the scope of this re-determination of the value. These read as follows.

#### **Section 14. Valuation of goods.**

(1) **For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say,** the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, **for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related** and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

**Provided further that the rules made in this behalf may provide for,-**

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

**(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:**

(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation . - For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

## **Valuation Rules**

### **1. Short title, commencement and application.-**

(1) These rules may be called the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

(2) They shall come into force on the 10th day of October, 2007.

(3) They shall apply to the export goods.

2. Definitions. -

(1) In these rules, unless the context otherwise requires, -

(a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially inter-changeable with the goods being valued, produced by the same person or a different person; and

**(b) "transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).**

(2) For the purposes of these rules, persons shall be deemed to be "related" only if -

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognised partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

### **3. Determination of the method of valuation. -**

**(1) Subject to rule 8, the value of export goods shall be the transaction value.**

(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

### **4. Determination of export value by comparison.-**

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

- (i) difference in the dates of exportation,
- (ii) difference in commercial levels and quantity levels,
- (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- (iv) difference in domestic freight and insurance charges depending on the place of exportation.

**5. Computed value method. -**

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

- (a) cost of production , manufacture or processing of export goods;
- (b) charges, if any, for the design or brand;
- (c) an amount towards profit.

**6. Residual method. -**

(1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

**7. Declaration by the exporter.-**

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

**8. Rejection of declared value.-**

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.

(1) For the removal of doubts, it is hereby declared that-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent

the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.

(iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include -

(a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

(c) the mis-declaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

18. What is evident from the above is that the transaction value for delivery of the goods at the time and place of exportation (i.e., the FOB value) shall be the value under section 14 except when it is rejected by the proper officer and re-determined under the Valuation Rules. It must be noted that it is the proper officer and NOT THE EXPORTER who can reject the transaction value and re-determine it following some other method. It would be impossible for the exporter to anticipate if the proper officer would reject his transaction value and if so, what value the proper officer would fix and following which method and accordingly file the Shipping Bill. All that the exporter can do is truthfully declare the transaction value in the Shipping Bills.

19. Once the exporter declares the transaction value, if the proper officer wants to re-determine it and fix some other value, he must, in the first place, reject the transaction value under rule 8. This rejection itself has to be in two stages- in the first place, if he has some reason to doubt, he can call for further information from the exporter and if no such information is

received or after receiving the information if the proper officer still has reasonable doubt about the truth and accuracy of the declared transaction value, he can reject it. In this case, the initial doubt of the proper officer was based on his opinion that the goods were of low value. If he had such a doubt, he should have, in the first place, called for additional information and thereafter determined if he had a reasonable doubt about the truth and accuracy of the declared transaction value, he could have proceeded to determine the value sequentially following rules 4 to 6.

20. In this case, we do not find any reasonable doubt has been recorded by the Joint Commissioner. On the other hand, according to the learned counsel, the officers examined the suppliers of the goods who had sold the goods to the respondent and they confirmed the transaction value. Subsequently, the remittance from the overseas buyers, as evidenced by the BRCs also showed that the transaction value was correct.

21. The department's submission is that merely because the BRCs have shown remittance of the value as per declared FOB value, it does not mean that the value is correct. We find this argument rather strange. When goods are sold, the price is decided by the buyer and the seller. If one has a doubt about the price, the obvious way of checking the price is to see how much was paid for the goods. In case of exports, because of foreign exchange regulations, the bank records the remittances received against each export and issues a BRC.

22. The submission of the department is that the buyer's invoices cannot be trusted and the remittance cannot be trusted and the BRCs issued by the bank also cannot be trusted and transaction value (FOB value) must be

taken as the value decided by the investigating officer based on his opinion about how much the goods were worth and based on the opinions of some traders in the market cannot be accepted.

23. Since the rejection of the transaction value under rule 8 cannot be sustained neither can its re-determination under rule 6. It must also be pointed out even if the value was rejected under rule 8, it could only be re-determined sequentially under rules 4 to 6 and the officer could not jump to rule 6 without first recording the reasons for not determining the values under rules 4 and 5.

24. A doubt may arise whether the transaction value of the export goods can be significantly higher than the market value of such goods in the Indian market determined through market enquiry. The answer to this is in Section 76 of the Act which reads as follows:

**Section 76. Prohibition and regulation of drawback in certain cases. -**

**(1) Notwithstanding anything herein before contained, no drawback shall be allowed -**

(a) \*\*\*

**(b) in respect of any goods the market-price of which is less than the amount of drawback due thereon;**

(c) where the drawback due in respect of any goods is less than fifty rupees.

(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

25. Section 76 (1)(b) clearly conceives that the market value of the goods, i.e., the price at which such goods are sold in Indian market could be lower and the export prices could be much higher. An illustration will explain the

legal position beyond any shadow of doubt. Goods, which are worth, say, Rs. 100/- are exported for say, Rs. 200/- and the drawback rate is 10%. The exporter would get drawback of Rs. 20/-(10% of Rs. 200/-). If the same goods are exported, say at Rs. 800/-, the export would likewise, get drawback of Rs. 80/- and if the goods are exported at Rs. 1,000/-, the exporter would get drawback of Rs. 100/- which is equal to the market value of the exported goods. However, if the goods are exported at Rs. 1,100/-, the drawback payable would be Rs. 110/- more than the market value of the goods (Rs.100/-). In such a case, as per section 76 (1) (b), no drawback will be payable at all. Even in such a case, there is no prohibition on exporting the goods at such a high price; only the drawback will not be paid. Section 76 makes it more than explicit that the transaction value of the export goods can be much higher than the market value of such goods in Indian market.

26. It must also be noted that as discussed above, drawback, ROSCTL, etc. are paid on the FOB value (transaction value) and not on the assessable value determined under the Customs Valuation Rules.

27. It is trite to say that no stranger to the contract can change the transaction value (FOB value) of the goods.

28. For all the above reasons, we find that the re-determination of the FOB value of the export goods by the Joint Commissioner has been correctly set aside by the Commissioner (Appeals) in the impugned order.

**Change of the serial number in the drawback schedule and the ROSTCL schedule and consequent re-determination of admissible drawback and ROSCTL**

29. The garments were declared to be of 100% cotton and on testing by CRCL, they were found to be made of blend of polyester and cotton. This

necessitated change of the serial number of the drawback and ROSTCL schedules and consequently, the rates at which these incentives were available. The Joint Commissioner re-determined the drawback and ROSCTL which are admissible not only based on the redetermined FOB value but also based on the revised serial number in these two schedules.

30. The fact that the garments were found to be of blended fabrics and not of 100% cotton is not in dispute. CRCL tested and gave a report and the appellant accepted the test report. There is no contrary evidence or test reports even before us to say that the goods were actually made of 100% cotton. However, in the impugned order, the Commissioner (Appeals) completely ignored this aspect when setting aside the order of the Joint Commissioner which was an error.

31. We find that the re-determination of the drawback and ROSTCL schedules by the Joint Commissioner must be restored.

### **Confiscation of the goods and redemption fine**

32. The Commissioner (Appeals) held that seizure of goods under section 110 is a pre-requisite for confiscation of goods and since there was no seizure memo but only a detention memo, confiscation of the goods under section 113 and the consequential redemption fine under section 125 cannot be sustained.

33. A finding has also been recorded that the reasonable doubt that the goods were liable to confiscation is a pre-requisite for seizing the goods and the doubt is not evident.

34. Learned authorised representative, on the other hand, points out that seizure is not a pre-requisite for confiscation. He further submits that where the goods are already in the custody of the custodian and the customs does not process their clearance because of some investigation, a detention memo is issued giving reasons for the detention. The detention memo in this case clearly indicated the reason for doubt. Although detention is not seizure under section 110, through a series of judicial pronouncements, it has been held that detention should also be treated as seizure in the interest of justice. He points out that if the goods are seized under section 110 because if goods are seized and no show cause notice is issued within six months of seizure, as per section 110(2), the goods must be returned to the person from whom they are seized. So, if imported goods or export goods are first detained and say, after a couple of months, seized under section 110, if only seizure is considered, the officer can issue an SCN within 6 months from the date of the seizure although the goods were actually detained two months before that date. Through a series of judicial decisions it has been held that detention should also be considered as seizure and the six months period under section 110(2) has to be counted from the date of detention.

35. Learned authorised representative further points out that if goods are seized, they can be provisionally released under a bond and if they are so released, since they are no longer available for confiscation at the time of adjudication, redemption fine can be imposed in lieu of such confiscation. He relied on the judgment of the Supreme Court in **Weston Components**.

36. The same method is followed if goods are detained without but they are not seized. In this case, while the goods were in the customs area, they

were detained on suspicion of overvaluation and they were released and allowed to be exported on the request of the Respondent and execution of a bond by the Respondent. For this reason, the redemption fine is fully sustainable and the Commissioner (Appeals) fell in error in setting aside the redemption fine.

37. Learned counsel for the respondent supported the impugned order on this issue.

38. We find that the Commissioner (Appeals) has presumed that seizure under section 110 is a pre-requisite for confiscation under section 113. Such is, however, not the case. Nothing in section 113 (or section 111 in case of imported goods) stipulates that only seized goods can be confiscated. Section 113 provides for confiscation of export goods and section 111 provides for confiscation of imported goods. Seizure is the act of taking physical possession of the goods which are believed to be liable to confiscation whereas on confiscation the goods vest in the central government. The only important thing is that the goods must be available for confiscation and in order to ensure that they are available, goods are seized. If the goods are otherwise available (say, by being in the custody of the custodian), they can be confiscated. A perusal of section 110, 110A, 113 and 126 will clarify the position that seizure is not a pre-requisite for confiscation. They read as follows:

**Section 110. Seizure of goods, documents and things. -**

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, **he may seize such goods:**

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(2) Where any goods are seized under sub-section (1) and **no notice in respect thereof is given under clause (a) of section 124 within six months of the**

**seizure of the goods, the goods shall be returned to the person from whose possession they were seized:**

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**Section 110A. Provisional release of goods, documents and things seized or bank account provisionally attached pending adjudication. -**

Any goods, documents or things seized or bank account provisionally attached under section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

**SECTION 113. Confiscation of goods attempted to be improperly exported, etc. -** The following export goods shall be liable to confiscation:-

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(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 ;

(ia) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75 ;

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(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;

**Section 124. Issue of show cause notice before confiscation of goods, etc. -**

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

**Section 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:**

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**(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.**

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**Section 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.**

39. Nothing in any of the above sections stipulates that seizure is a pre-requisite for confiscation. Any lingering doubt will be removed if section 126 (2) is examined. It states that 'the officer adjudging confiscation shall take and hold possession of the confiscated goods.' If the goods have already been seized, there is nothing to take possession of. However, if the goods have been confiscated but have not been already seized, the adjudicating officer has to take and hold possession of the goods. So, it is perfectly possible for the goods to be confiscated without actually seizing them provided they are available and it is possible to take and hold possession of the goods.

40. Section 110A provides for provisional release of things seized on execution of a bond. In this case, the respondent had sought release of the detained goods to export them and for that purpose executed a bond. Once a bond is executed, the bond binds the owner of the goods to pay the redemption fine in lieu of confiscation and therefore, fine can be imposed in

lieu of confiscation. But for the bond, the owner of the goods can only be given an option to pay fine in lieu of confiscation. The owner of the goods may choose the option, pay fine and redeem the goods or may not choose the option, not pay fine and not redeem the goods. It is held by the Supreme Court in **Weston components** that if goods are released provisionally on bond, redemption fine can be imposed. The relevant text of this judgment is below:

“ It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that **the goods were released to the appellant on an application made by it and on the appellant executing a bond**. Under these circumstances **if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine.**

2. The appeal is dismissed.”

**(emphasis supplied)**

41. We now proceed to examine if in the facts of the case, the export goods were liable to confiscation under section 113 (i) (ia) and (ja). Clause (i) of section 113 provides for confiscation of export goods which do not correspond in value and or in any particular to the entry made. According to the Joint Commissioner, the goods did not correspond in value and also in description (nature of the fabric). While we found in favour of the respondent insofar as the value is concerned, the fact that the export goods were declared as being of cotton but found to be of blended fabric by CRCL is not disputed. Thus, the goods fall under section 113(i).

42. Section 113 (ia) provides for confiscation of any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback

under section 75. There is no dispute that the goods were entered for export under claim of drawback and that the goods were found to be of a different fabric than what has been declared and this required a change in the serial number of the drawback schedule. Thus, the goods were liable to confiscation under section 113 (ia).

43. Section 113 (ja) provides for confiscation of any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force. The respondent claimed refund of state levies (ROSCTL) and that the fabric of the export goods did not correspond to the declaration and this required classification of the goods under a different heading of ROSCTL schedule. Thus, the goods were liable to confiscation under section 113 (ja).

44. While the export goods were liable to confiscation, in order to actually confiscate them, they must be available because after confiscation, the adjudicating authority has to take possession of the goods as per section 124 (2). The goods had already been provisionally allowed to be exported on execution of a bond. The Joint Commissioner could have imposed a fine in lieu of confiscation in terms of the bond. Instead, the Joint Commissioner confiscated the goods and gave the respondent an option to redeem them on payment of redemption fine which made it perfectly possible for the respondent to not exercise this option. There was no appeal by the Revenue before the Commissioner (Appeals) against this part of the order of the Joint Commissioner.

45. It must further be pointed out that when goods (which are seized or detained) are provisionally released on bond, one of the conditions of the bond is that if the goods are held liable to confiscation, the exporter (or importer) would pay redemption fine in lieu of such confiscation. Learned authorised representative for the Revenue took us through the bond that was executed by the respondent and accepted by the officer. This bond does not state that if the goods are liable to confiscation, the respondent would pay redemption fine in lieu of such confiscation.

46. Thus, the redemption fine cannot be sustained for two reasons (i) the Joint Commissioner had only given the respondent an option to pay fine in lieu of confiscation and the respondent is perfectly within his right to not exercise this option; and (ii) the bond for provisional release executed by the respondent and accepted by the officer did not provide that if the goods are held liable to confiscation, the respondent would pay a fine in lieu of confiscation.

#### **Penalties under section 114 (iii) and 114AA**

47. The Joint Commissioner imposed penalties under section 114 (iii) and 114AA. The Commissioner (Appeals) set aside the penalties holding that penalty under section 114AA is dependent on confiscation of the goods under section 113. The Commissioner (Appeals) did not discuss the provisions of section 114 (iii) at all.

48. As rightly pointed out on behalf of the Revenue, penalty under section 114AA is not contingent upon the confiscation of the goods under section 113 and it has nothing to do with section 113. 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.

49. A perusal of this section makes it clear as crystal that penalty under section 114AA can be imposed if there was a mis-declaration with knowledge and has nothing to do with confiscation of the goods under section 113. The Commissioner (Appeals) clearly fell in error in holding that penalty under section 114AA is dependent on the confiscation under section 113. According to the Joint Commissioner, the respondent had mis-declared both the value of the goods and the nature of the fabric of which the garments were made. We have held in favour of the respondent on the question of value and there is no dispute that the nature of the fabric was different from what was declared. The question is whether it was done knowingly. From the records of the case, the intention to mis-declare the nature of the fabric is not clearly emerging. For this reason alone, it is not possible to restore the penalty on the respondent under section 114AA imposed by the Joint Commissioner. The setting aside of this penalty by the Commissioner (Appeals) must be upheld although the reasons given by the Commissioner (Appeals) that this penalty is contingent upon confiscation is contrary to law.

50. The Commissioner (Appeals) did not discuss or examine section 114 (iii) at all. This section would apply for acts or omissions which rendered the goods liable to confiscation under section 113. This section does not require that the goods must be actually confiscated. Once the goods are held liable to confiscation, even if they are not actually confiscated (say because they are not available), penalty under section 114 (iii) can be imposed. Section

114 deals with three types of goods viz., prohibited goods [clause (i)] dutiable goods [clause (ii)] and other goods [clause (iii)]. The export goods in this case were not prohibited nor were they chargeable to duty. Therefore, section 114 (iii) would squarely apply to the case. This section reads as follows:

**Section 114. Penalty for attempt to export goods improperly, etc. -**

**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 113**, or abets the doing or omission of such an act, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

**Provided** that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

**(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.**

51. The declared FOB value of the goods was Rs.10,88,05,179/- in the four shipping bills and the penalty imposed by the Joint Commissioner under section 114 (iii) was only Rs. 2,00,000/- way below the value of the goods. The Commissioner (Appeals) did not discuss this penalty when setting it aside.

52. In view of the undisputed fact that the nature of the fabrics in the export goods were mis-declared and consequently, they were liable to confiscation and the respondent's actions rendered them liable to confiscation, the penalty of Rs. 2,00,000/- under section 114 (iii) imposed

by the Joint Commissioner must be restored and the impugned order must be set aside to this extent.

53. To sum up:

- a) The re-determination of the FOB value of the export goods by the Joint Commissioner has been correctly set aside by the Commissioner (Appeals) in the impugned order and the same is upheld.
- b) The mis-declaration of the nature of the fabrics of the garments is undisputed. The Commissioner (Appeals) committed an error in not considering this mis-declaration.
- c) Since the nature of the goods is different, the correct serial number in the drawback schedule and the ROSCTL schedule must be applied and accordingly, the amount of drawback and ROSCTL must be re-calculated accordingly.
- d) Since the nature of the goods was mis-declared, the export goods were liable to confiscation under section 113 (i), (ia) and (ja) of the Act but they were not actually available for confiscation. The Joint Commissioner fell in error in confiscating the goods and allowing the respondent an option to redeem them on paying a redemption fine instead of holding the export goods liable to confiscation and imposing a fine in lieu of confiscation.
- e) The redemption fine cannot be restored for the reason that the Joint Commissioner gave the respondent an option to pay it or not and in the bond executed by the respondent at the time of provisional assessment, there was no undertaking to pay a fine in lieu if the goods are held liable to confiscation.
- f) The Commissioner (Appeals) erred in stating that penalty under section 114AA can be imposed only if goods are confiscated as this is contrary to the explicit text of the section. However, penalty under section 114AA imposed by the Joint Commissioner cannot be

restored because we do not find sufficient evidence that the respondent had 'knowingly mis-declared' which is a pre-requisite for penalty under this section.

- g) The Commissioner (Appeals) erred in not discussing the penalty imposed under section 114 (iii) at all. Penalty under section 114 (iii) can be imposed for acts or omissions which render the goods liable to confiscation under section 113 even if they are not actually confiscated. The penalty of Rs. 2,00,000/- imposed by the Joint Commissioner for acts which rendered goods worth Rs.10,88,05,179/- liable to confiscation under section 113 (i), (ia) and (ja) is quite modest which must be restored.

54. The appeal filed by the Revenue is partly allowed by upholding the re-determination of the drawback and ROSTCL as per the correct serial number of the Schedules as per the nature of the fabrics of the garments and restoring penalty of Rs. 2,00,000/- on the respondent under section 114(iii). The impugned order is modified to the said extent only. As the appeal itself has been decided, the stay application has been rendered infructuous. It is, accordingly, rejected.

(Order pronounced in court on 26/11/2025.)

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

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