

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75778 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS/AIRPORT/KS/495/2023 dated 30.06.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Amit Bhutoria

AE-210, Salt Lake City, Near Tank No. 4,
Kolkata – 700 064

: Appellant

VERSUS

Commissioner of Customs (Airport & ACC)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

AND

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: Respondent

APPEARANCE:

Shri V.N. Dwivedi and Smt. Jayanti Char, both Advocates,
For the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77825-77826 / 2025

DATE OF HEARING: 21.11.2025

DATE OF DECISION: 02.12.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The captioned appeals have been filed by Shri Amit Bhutoria, AE-210, Salt Lake City, Near Tank No. 4, Kolkata – 700 064, West Bengal [hereinafter referred to as the “appellant”] against the penalties imposed on him under Sections 112(a)(iii), and 114AA of the Customs Act, 1962, as upheld by the Id. lower appellate authority by way of Order-in-Appeal No. KOL/CUS/AIRPORT/KS/495/2023 dated 30.06.2023 and Order-in-Appeal No. KOL/CUS/AIRPORT/KS/494/2023 dated 30.06.2023.

2. The facts of the case are that intelligence was developed by the Directorate of Revenue Intelligence to the effect that certain unscrupulous importers are importing goods declared as “rough precious stones” and “semi-precious stones” such as Blue Sapphire, Ruby, etc., mainly from Hong Kong and Dubai, by over-invoicing the same. As per the intelligence, goods of inferior quality, having no value in the market, are being declared before the Indian Customs with a high value, with a view to send illegal money out of India in the guise of import payments leading to ‘Trade Based Money Laundering’, there being no customs duty on the said items and IGST payable being nominal. Acting on such intelligence, investigations were initiated by the DRI, KZU against imports of such goods by way of several Bills of Entry from Kolkata Airport by M/s. Gaurik Trading Private Limited and M/s. Destiny (Star) India Private Limited.

2.1. During the course of investigation, the investigating officers came to the conclusion that Shri Amit Bhutoria, a Government approved valuer (appellant herein), had connived with Shri Ashok Kumar Chanda of M/s. Chatterjee & Co., on behalf of

M/s. Gaurik Trading Private Ltd. and others, amongst other valuers, to facilitate clearance of such mis-declared goods; that as a Govt. Approved valuer, the appellant has allegedly not only certified the highly over-invoiced values of the imported stones, but has also given incorrect certificates with regard to the nature of the goods as "precious rough-semi precious stones", whereas, the goods were actually inferior quality stones and whose values were much lower than that declared.

2.2. During the course of investigation, statements were recorded from the appellant, under section 108 of the Customs Act, 1962. It was thus alleged that the import consignments were highly overvalued in the invoices of the overseas suppliers and such overvaluation was supported by the valuation done by the Appellant, on receipt of extra monetary consideration.

2.3. Accordingly, it was alleged that the appellant, in connivance with Shri. Sourabh Johari and Custom Broker, amongst other valuers, had knowingly and intentionally incorrectly and falsely certified the values of the goods imported under the impugned bills of entry filed by M/s. Gaurik Trading Private Limited and other importers, which is in violation of Sections 14 and 46 of Customs Act, 1962; that the appellant had omitted and committed an act, which has rendered the said goods, covered under the impugned Bills of Entry, liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, it was alleged that the appellant is liable to be penalized under Sections 112(a)(iii), 112(b)(iii) and 114AA of the Customs Act, 1962.

3. On the basis of the aforesaid allegations, Show Cause Notices were issued, inter alia, to the appellant, proposing to impose penalties under Sections 112(a)(iii), 112(b)(iii) and Section 114AA of the Act.

3.1. The said Show Cause Notices were adjudicated by the Ld. Joint Commissioner of Customs, Adjudication Cell (Airport & A.C.C.), 15/1, Custom House, Strand Road, Kolkata – 700 001 vide adjudication orders dated 02.05.2022 and 10.06.2022 wherein the penalties imposed on the appellant, amongst others, under Sections 112(a)(iii), 112(b)(iii) and Section 114AA of the Act were confirmed.

3.2. The appellant challenged the above order of imposition of penalties before the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001, who vide the orders impugned herein, upheld the imposition of penalty on the appellant under Sections 112(a)(iii) and 114AA ibid. The penalty imposed under the provisions of Section 112(b)(iii) of the said Act was however set aside by the Id. lower appellate authority.

3.3. The details of the penalties confirmed and/or upheld against the appellant, which is the subject matter of the present proceedings are as under: -

Sl. No.	Appeal No.	OIA No. & Dt.	Penalty imposed
1.	C/75778/2023	OIA No. KOL/CUS/AIRPORT/KS/495/2023 dated 30.06.2023	Rs.22,50,000/- under Section 112(a)(iii) Rs.45,00,000/- under Section 114AA
2.	C/75779/2023	OIA No. KOL/CUS/AIRPORT/KS/494/2023 dated 30.06.2023	Rs.37,50,000/- under Section 112(a)(iii) Rs.75,00,000/- under Section 114AA

3.4. Aggrieved by the imposition of penalties as above, the appellant has filed these appeals.

3.5. As the issue involved in both these appeals are the same, both are taken up together for issuing a common order.

4. The Ld. Counsel appearing on behalf of the appellant has made various submissions, which can be broadly summarized as under: -

- (i) The samples preserved by department from consignments examined by the appellant were never revalued by the Government appointed valuer Sri Sunil Verma. Such samples were also not examined by Geological Survey of India. As such, the reports of those authorities are not relevant to the adjudication of the instant case.
- (ii) The appellant inter alia valued the goods covered by three bills of entry i) 9773744 dated 24.01.2019 ii) 9871651 dated 31.01.2019 and iii) 9872411 dated 31.01.2019. The goods covered under those bills of entry were respectively semi-precious tourmaline stones and ruby rough stones.

- (iii) Samples from each of the aforesaid Bills of Entry were drawn and forwarded to the group for inspection purpose. The said samples were never sent either to Geological Survey of India for examination or Sri Sunil Kumar Verma for re-valuation.
- (iv) The goods examined by the appellant were cleared and out of charge of the Customs after completion of customs formalities.
- (v) It is, therefore, submitted that goods examined by the appellant are not comparable to the goods samples which were examined by the GSI and the Govt. appointed valuer. It is further submitted that SCN does not explain as to why the samples preserved from the consignment examined by the appellant, were not sent for examination by GSI and Govt. appointed valuer Shri Sunil K. Verma. The department acted, assessed and cleared the goods on its own valuation and not on the valuation given by the appellant.
- (vi) The authorities below have erred in holding that the appellant admitted in his voluntary statement recorded u/s 108 of the Customs Act 1962, that the import consignments were highly overvalued in the invoices of the Overseas Suppliers and that he gave valuation certificate as per the invoice of the Overseas Supplier against extra monetary consideration. Such allegation and finding is perverse, baseless and incorrect.
- (vii) The appellant acted as a valuer in the professional capacity. There is nothing on

record to show that he derived any benefit from the impugned imports or intended to derive any such benefit.

- (viii) The examination was conducted in the presence of the Custom Officers, without reference to the examination order (which was never shown to the appellant) and the appellant to the best of his knowledge and experience, gave its value which was never acted upon or accepted by the department.
- (ix) The appellant never issued any certificate falling u/s 114AA of the Act; nor he was called upon to certify the description of the goods or its composition.
- (x) There is nothing on record to show that the appellant had prior knowledge about the impugned import or that he knowingly or intentionally gave the over-invoiced value to the goods examined by him or that he connived or abetted the offence u/s 112 of the act.
- (xi) The presumption of innocence is a background of our legal system. From the allegations against the appellant it is seen that there is nothing to prove that there was a common intention between the appellant or any of the others involved, or that they worked in connivance. As a rule of prudence while examining the evidentiary value of a statement, it is desirable to seek corroboration of such evidence from other reliable evidence placed on record which is lacking in the instant case.
- (xii) None of others involved in the offence case, implicated the appellant. Findings in the

impugned orders do not state that appellant had any stake in the impugned imports or he got any extra consideration save and except his govt. prescribed fees. The evidences do not show that the appellant had a common intention along with importer and others involved to do or omit to do any act which act, or omission would render such goods liable to confiscation or abets the doing or omission of such an act. This being so the charge of collusion or connivance is not proved hence penalty imposed under Section 112 (a) (iii) merits to be dropped. Reliance in this regard is placed on the decision in the case of *Meticulous Forwarders v. Commissioner of Customs* [2025 SCC ONLINE CESTAT 2048 (Tri)]

(xiii) Section 114AA of the Act is not attracted in this case; that in any event the penalty imposed exceeds the prescribed limit.

4.1. The appellant has mainly submitted that the samples tested by him and the samples submitted for test by the Department of Geological Survey of India are not the same. Accordingly, it is his contention that there is nothing on record to substantiate that the test conducted by the Geological Survey of India was on the same samples which were examined by him and valuation was given by him.

4.2. In view of the above submissions, the appellant prays for setting aside the penalties imposed on him.

5. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned orders.

6. Heard both sides and perused the records.

7. We find that the appellant has filed these appeals against the penalties imposed on him under the sections 112(a)(iii) and 114AA of the Customs Act, 1962. For ready reference, the said sections are extracted below:

Section 112(a)(iii):

112. Penalty for improper importation of goods, etc.—Any person:-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

...

shall be liable,--

...

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared thereof or five thousand rupees], whichever is the greater;

Section 114AA:

Section 114AA (Penalty for use of false and incorrect material) of the Custom Act, 1962 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

7.1. A perusal of the sections extracted above reveals that for imposition of penalty under Section 112(a)(iii), it must be established that the actions of the appellant rendered the goods liable for confiscation under the Customs Act while for imposition of penalty under Section 114AA, the appellant must have intentionally made some false statement or submitted incorrect documents.

8. In the present case, we find that the allegation against the appellant is that he has connived with the importers and intentionally, incorrectly and falsely certified the values of the goods imported under the impugned bills of entry to help the importers. We note that the appellant is a Government approved valuer, who was called by the importer for valuation of certain consignment of precious/ semi-precious stones. As a valuer, he certified the goods as precious / semi-precious rough stones whereas, allegedly, the goods were actually of inferior quality stones whose value is Rs.8,000/- to Rs.15,000/- per kg. Reliance has been placed by the Revenue on the statement recorded from the appellant under Section 108 of the Customs Act, 1962. However, the appellant categorically stated that he has not given any statement admitting his offence.

8.1. We find that samples were drawn by the Department from the consignments examined by the appellant. These samples were forwarded to the group for inspection purpose. However, we find that the said samples were never sent either to Geological Survey of India for examination or Sri Sunil Kumar Verma for re-valuation. From the adjudication order dated 10.06.2022, it is seen that the Id. adjudicating authority has recorded as follows: -

"7.1 Thereafter, Shri Sanjay Choudhury was asked to take the Officers to the said places where he had thrown these stones. Thereafter, DRI officers recovered 10 (ten) polythene packets of stones thrown on the roadside, along with scattered stones, in two locations in Chamshara, Hoogly and Jagannathpur, Hooghly. The said stones have been seized by DRI on 16.03.2019 with reasonable beliefs that these were the stones imported in guise of precious and semi-precious stones from Kolkata Airport, after drawing samples of the same in duplicate from each packets. The samples were marked as Sample-Champsara-1, Samples Champsara-2, Sample-Jagannathpur-1 and Samples-Jaganathpur-2."

8.1.1. Thus, it can be seen that the investigation has been conducted on the basis of "stones thrown on the roadside" by the DRI. Samples from these have been tested and not on the samples examined by the appellant. We find that neither the Show Cause Notice nor the impugned orders explain as to why the samples preserved from the consignment examined by the appellant were not sent for examination by GSI and Govt. appointed valuer, Shri Sunil K. Verma. We also find that the Department acted, assessed and cleared the goods on its own valuation and not on the valuation given by the appellant. Thus, we observe that the valuation done by the appellant has not been used by the assessing officers for the purpose of determining the duty liability, if any, payable by the importers.

9. Further, we find that the goods examined by the appellant were cleared and out of charge were given by the Customs after completion of customs formalities. From the Order-in-Original dated 10.06.2022 [in respect of Customs Appeal No. 75779 of 2023], we find that the investigation has been initiated by the Department against some importers, as listed under paragraph 7.3 of the said order. For

the sake of ready reference, the Table indicating the list of such importers against whom investigation has been conducted is reproduced below: -

BE	BE DATE	Goods declared	QTY (in Kgs)	ASS VAL	Govt. Valuers	Value given by Valuers
2162786	22-02-2019	Rough Precious Stones Blue Sapphire	17.774	₹ 6,44,57,766	Abhishek Saraogi	₹ 6,63,85,889
2160971	22-02-2019		17.769	₹ 6,44,61,275	Dulpesh Kothari	₹ 6,74,84,763
2162785	22-02-2019		17.772	₹ 6,45,80,604	Abhishek Saraogi	₹ 6,65,57,562
2163262	22-02-2019		17.772	₹ 6,45,97,666	Abhishek Saraogi	₹ 6,66,45,000
2160218	22-02-2019	Rough Stones Blue Sapphire	17.777	₹ 6,45,51,845	Kiril H. Kothari	₹ 7,01,40,931
2162534	22-02-2019		17.771	₹ 6,45,30,036	Kadam Kumar Surana	₹ 6,74,30,282
2162793	22-02-2019		17.773	₹ 6,45,16,005	Kadam Kumar Surana	₹ 6,74,37,871

The goods declared in the said Bills of Entry were as follows: -

S N	AWB No.	AWB Date	BE	BE DATE	IMPORTER's NAME	CHA NAME
1	4378833 565	20-02- 2019	21627 86	22-02- 2019	Base2sky Gems & Jewellery Private Limited	P S Shipping And Logistics
2	4378833 484	20-02- 2019	21609 71	22-02- 2019	Luscious Gems & Jewellery Private Limited	P.S.Shipping And Logistics
3	4378833 554	20-02- 2019	21627 85	22-02- 2019	Nasdeen Multiventure Private Limited	P S Shipping And Logistics
4	4378833 576	20-02- 2019	21632 62	22-02- 2019	Pujan Diamond Pvt. Ltd.	P S Shipping And Logistics
5	4378833 365	20-02- 2019	21602 18	22-02- 2019	Oragem Exim Private Limited	Chatterjee& Co.
6	4378833 440	20-02- 2019	21625 34	22-02- 2019	Silverex Exim Private Limited	Chatterjee& Co.
7	4378833 322	20-02- 2019	21627 93	22-02- 2019		

[ref. paragraph 7.3 of Order in Original No.KOL/CUS/JOINTCOMMISSIONER/AP/ADMN/27/2022 dtd. 10.06.2022]

9.1. Thereafter, the total value of the impugned goods [in respect of Customs Appeal No. 75779 of 2023] arrived at on the basis of the valuation reports given by Shri Sunil K. Varma, Govt. approved valuer, as well as the report of Geological Survey of India, has been worked out by the Id. adjudicating authority under paragraph 14.3 of the said order, as under: -

B.E. No.	B.E. date	Actual description	Actual Qty [in KG]	Re-determined	
				Unit price	Value
9773744	24.01.2019	Natural Corundum. Non-Gem/ Non-Sapphire grade	7.368	₹ 8,000	₹ 58,944
9871651	31.01.2019	Natural Corundum. Non-Gem/ Non-Sapphire grade	22.190	₹ 8,000	₹ 1,77,520
9872411	31.01.2019	Natural Corundum. Non-Gem/ Non-Sapphire grade	22.174	₹ 8,000	₹ 1,77,392
2094333	18.02.2019	Natural Corundum. Non-Gem/ Non-Sapphire grade	17.778	₹ 8,000	₹ 1,42,224
2094974	18.02.2019	Natural Corundum. Non-Gem/ Non-Sapphire grade	17.783	₹ 8,000	₹ 1,42,264
TOTAL					₹6,98,344

[ref. paragraph 14.3 of Order in Original No.KOL/CUS/JOINTCOMMISSIONER/AP/ADMN/27/2022 dtd. 10.06.2022]

9.2. We find that the appellant has not done the valuation of any of the importers mentioned in the above Table. We find that the samples which were examined by the GSI and the Govt. appointed valuer pertained to the goods imported by the above said importers. Therefore, we find that the goods examined by the appellant and the goods valued by GSI and the Govt. appointed valuer, Sri Sunil K. Verma are not the same.

10. We find that in respect of the other appeal viz. Customs Appeal No. 75778 of 2023 also, there is no evidence that the goods examined by the appellant were the subject matter of the proceedings in the said appeal. There is no evidence adduced by the Revenue to establish that the goods examined by the appellant and the goods pertaining to the investigation are one and the same.

11. We find that the appellant acted as a valuer in his professional capacity. There is nothing on record to show that he derived any benefit from the impugned imports or intended to derive any such benefit. The evidences available on record indicate that he gave his

valuation as per the invoice of the Overseas Supplier. It is on record that the value which was given by the appellant was never acted upon or accepted by the Department. We also find that there is no evidence available on record to indicate that the appellant has done the valuation on receipt of extra monetary consideration. We are therefore of the view that such allegation and finding is baseless, incorrect and not supported by any evidence. There is nothing on record to show that the appellant had prior knowledge about the impugned import or that he knowingly or intentionally gave the over-invoiced value to the goods examined by him or that he connived or abetted the offence. Accordingly, we find that the ingredients required for imposing penalty under Section 112(a)(iii) of the Customs Act, 1962 do not exist in this case. Thus, we hold that the penalty imposed on the appellant under section 112(a)(iii) of the Customs Act is not sustainable and hence, we set aside the same.

11.1. For imposition of penalty under Section 114AA, the appellant must have intentionally made some false statement or submitted incorrect documents. In the present case, we observe that the allegation against the appellant is that as a Govt. Approved valuer, he has certified the highly over-invoiced values of the imported stones and given incorrect certificates with regard to the nature of the goods as "precious rough-semi precious stones", whereas, the goods were actually inferior quality stones and whose values were much lower than that declared. However, from a perusal of the records, it is clear that the samples drawn from the consignment examined by the appellant were not sent for examination by GSI and Govt. appointed valuer Sri Sunil K. Verma. In the

absence of any corroborative evidence linking the goods examined by the appellant with those involved in the investigation conducted, it cannot be said that these goods were one and the same. We also find that the Department acted, assessed and cleared the goods on its own valuation and not on the valuation given by the appellant. It is observed that the valuation done by the appellant has not been used by the assessing officers for the purpose of determining the duty liability, if any, payable by the importers. We also find that the appellant never issued any certificate on the basis of which the goods imported were assessed and cleared. Under such circumstances, we are of the view that the ingredients required for imposing penalty under Section 114AA of the Customs Act do not exist in this case. Thus, we hold that the penalty imposed on the appellant under Section 114AA of the Customs Act is also not sustainable and hence, we set aside the same.

12. In view of the above findings, we set aside the penalties imposed on the appellant under the Sections 112(a)(iii) and 114AA of the Customs Act, 1962 and allow the appeals filed by the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on **02.12.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)