

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75674 of 2025

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/573-574/2024 dated 03.10.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Srimanta Rakshit

R/o. Uttar Radhakrishnapur, Shibbaty,
P.O.: Haripal, District: Hooghly,
West Bengal, PIN – 712 403

: Appellant

VERSUS

Commissioner of Customs (Port)

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

: Respondent

AND

Customs Appeal No. 76507 of 2025

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/573-574/2024 dated 03.10.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Sri Durga Impex and Logistics

Plot No. 225, Prachi Enclave, Niladri Vihar, Chandrasekharpur,
Bhubaneswar, Odisha, PIN – 751 016

: Appellant

VERSUS

Commissioner of Customs (Port)

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

: Respondent

APPEARANCE:

Shri Srikanta Kumar Mohapatra, Advocate, for the Appellant(s)

Shri Faiz Ahmed, Authorized Representative, for the Respondent

CORAM:

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

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

FINAL ORDER NOs. 77761-77762 / 2025

DATE OF HEARING: 20.11.2025

DATE OF DECISION: 24.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. Sri Durga Impex and Logistics, Bhubaneswar, Odisha – 751 016, is a licensed Customs Broker (CB) under the Customs Broker License Regulations, 2018 [hereinafter referred as the 'appellant-CB']. The appellant-CB has filed the instant appeal bearing No. C/76507/2025 challenging the Order-in-Appeal No. KOL/CUS (PORT)/ KS/ 573-574/2024 dated 03-10-2024, passed by the Commissioner of Customs (Appeal), Custom House, Kolkata, whereby the learned appellate authority has upheld the order of the learned adjudicating authority penalizing the appellant-CB under Sections 112(a)(i) and 114AA of the Customs Act, 1962 vide Order-in-Original No.- KOL/CUS/PORT/ADC/GR-II/3-/2024 dated 28.03.2024.

1.1. Shri Srimanta Rakshit (hereinafter referred to as the 'appellant') has filed the instant appeal bearing No. C/75675/2025 challenging the Order-in-Appeal No. KOL/CUS (PORT)/ KS/ 573-574/2024 dated 03-10-2024, passed by the Commissioner of Customs (Appeal), Custom House, Kolkata, whereby the learned appellate authority has upheld the order of the learned adjudicating authority imposing penalty upon the said appellant under Sections 112(a)(i) and 114AA of the Customs Act 1962.

1.2. As both the appeals have been filed against the same Order-in-Appeal, both are taken up together for decision by a common order.

2. Briefly stated facts of the case are that intelligence was received that M/s. Shree Laxmi Narayan Enterprises [Proprietor Shri Mahendra Singh] having address at 487/53, 54, 60, National Market, PeeraGarhi, Delhi – 110087 (hereafter referred to as

'importer') was importing goods declared as New Mining Radial Tyre Size 1000R20-18 Doupro/Road Mining Use Only (OTR) under Bill of Entry No. 9064531 dated 11.06.2022 & Bill of Entry No, 8960103 dated 03.05.2022 through the Customs Broker (CB) M/s Sri Durga Impex and Logistics (the appellant/CB herein) by way of mis-declaration to evade Customs duty and to avoid import policy restrictions. In pursuance, the goods were examined 100%. On examination, the goods were found to be mis-declared in terms of description, quantity and quality.

2.1. In respect of the Bill of Entry No. 9064531 dated 11.06.2022, as against the declared quantity of 440 pcs of mining tyres, on examination, 3308 pcs tyres of miscellaneous international brands were found concealed in the inner layer of big size tyres which were suitable to be used in motor cars/bus/trucks. In respect of the consignment covered under Bill of Entry No 8960103 dated 03.06.2022, as against the declared quantity of 440 pcs of mining radial tyres, 3337 pcs tyres, of miscellaneous international brands were found concealed in the similar manner in two containers suitable to be used in motor cars/bus/trucks. Subsequently the goods found in examination of the containers were seized under Section 110(1) of the act.

2.2. The statement of Shri Mahendra Singh, proprietor of Shree Laxmi Narayan Enterprises, was recorded before the superintendent of Central GST, Delhi West Commissionerate (Anti-Evasion), wherein he submitted that his Firm mainly deals in import and trading of goods like PVC resin, mining tyres, etc.; his firm is registered with the GST Department, with the

address 587/53,54,60, National Market Peera, Garhi, Delhi West, Delhi-110087; that the correct address was 487/53,54,60, National Market, Peera Garhi, Delhi West, Delhi – 110087 - wrongly mentioned as above, due to typographical error; he also submitted the copy of IEC certificate.

2.3. Statement of Shri Srimanta Rakshit, G-Card holder of the CB firm, was also recorded.

2.4. On completion of investigation, a Show Cause Notice bearing No. 12/2023 dated 06.02.2023 was issued to the appellants, proposing *inter alia* penalty on them under sections 112(a)(i) and 114AA of the Act.

2.5. On adjudication, the Ld. adjudicating authority passed *inter alia*, the following order:

(i) imposed a Penalty of Rs. 20,00,000/- under Section 112(a)(i) of the Customs Act, 1962 & Penalty of Rs.25,00,000/-under Section 114 AA of the Customs Act 1962 on Shri Simanta Rakshit, G-pass Holder and authorized signatory of CB M/s Sri Durga Impex & Logistics.

(ii) imposed a Penalty of Rs. 20,00,000/- under Section 112(a)(i) of the Customs Art. 1952 & Penalty of Rs 25,00,000/- under Section 114 AA of the Customs Act, 1962 on the CB M/s. Sri Durga Impex and Logistics.

2.6. On appeal, the Ld. Commissioner (Appeals) upheld the penalties imposed and rejected the appeals filed by both the appellants.

2.7. Being aggrieved by the impugned Order, both the appellants have filed the instant appeals.

3. The appellant-CB, M/s. Sri Durga Impex and Logistics, has submitted that penalty has been imposed on them on the allegation that the Customs Broker has failed to discharge their duties as laid down under CBLR, 2018 in order to execute the conspiracy to smuggle the prohibited goods. It is their submission that such allegations of violation of the provisions of CBLR, 2018 by the Customs Broker has been dealt in a separate proceeding under the Customs Broker Licensing Regulations [CBLR], 2018 and hence, the impugned Show Cause Notice issued under Section 124 of the Customs Act, 1962 is legally not tenable. The appellant-CB pointed out that on the basis of the same set of facts, the Department had ordered for suspension of the Customs Broker license of the appellant-CB under Regulation 16(2) of the CBLR,2018; that the said suspension order has been set aside by the CESTAT, Kolkata in Customs Appeal No.75757 of 2023 ordering for restoration of the same.It is their plea that once separate proceedings have been initiated against the appellant-CB under CBLR, 2018, for violation of the provisions of the said Regulations, no separate penalty imposable on the appellants under the provisions of Customs Act, 1962.Thus, it is the contention of the appellant-CB before us that the penalties imposed on them under Section 112(a)(i) and Section 114AA of the Customs Act, 1962 are not legally sustainable.

3.1. Shri Srimanta Rakshit, G-card holder of the appellant-Customs Broker firm, submitted that he had handled the documents, filed the BEs in respect of the impugned consignments; he had checked all import documents such as GST certificate, Aadhar Card, Pan Card, voter card, authorization letter, signature verified from bank; after 100% examination of the

consignments, he came to learn about the mis-declaration and the details of ongoing investigation was then informed to the managing partner cum F-card holder of the Customs Broker firm namely Shri Sugat Swain who in turn deposed that he had come to know about the misdeclaration in the consignment after receiving Summons on 15.08.2022. Thus, it is submitted by Shri Srimanta Rakshit that he has performed his duties as mandated under the CBLR, 2018 and there is no truth in the allegation that he was aware of the misdeclaration of the goods by the importer and had not disclosed the same to the customs authorities. The said appellant also submits that for imposing penalty under the Customs Act, it must be established that he has connived with the importer in the alleged offence of mis declaration of the imported goods; in this case, it is on record that the mis-declaration of the goods in terms of description, quantity and quality were came to light only after 100% examination of the goods by the investigation officers; this appellant being the employee of the CB Firm has no means to find out the mis-declared goods which were concealed inside the container. Accordingly, the appellant, Shri Srimanta Rakshit submits that the penalties imposed on him under Section 112(a)(i) and Section 114AA of the Customs Act, 1962 are not sustainable.

4. The Ld. Authorized Representative of the Revenue submits that the appellant-CB firm and Shri Srimanta Rakshit, the G-Card holder of the CB firm, have not carried out the KYC verification of the importer properly. It is his case that the import documents and authorization were given to Shri Srimanta by one Sri Ajay Kumar Singh on behalf of the importer for taking up the clearance work which

he received through email; that further investigation revealed that one Rajesh Kumar met with said Ajay Singh on behalf of the importer and entrusted the work to him for clearance of the consignments who in turn assigned the same to the said appellant herein namely, Shri Srimanta, being the employee of the CB-firm. Thus, he submits that the CB firm and their G-Card holder, have not done the verification of the importer before filing the bills of entry.

4.1. Further, it is also the submission advanced by the Ld. Departmental Representative that Shri Srimanta Rakshit, in his statement, had admitted that he came to know about the mis-declaration in respect of the ongoing investigation against the Bill of Entry No 8960103 dated 03.06.2022 and the details of the ongoing investigation were then informed to the managing partner cum F-card holder of the Customs Broker firm, namely, Shri Sugat Swain; however, both of them failed to disclose the details to the customs authorities. Thus, he submits that the CB Firm and the G-Card holder, both have abetted the offence of mis-declaration of the tyres in question. Hence, it is contended by him that penalties under the Sections 112(a) (i) and 114AA of the Customs Act, 1962 have been rightly imposed against the appellants. Accordingly, he prayed for rejection of the appeals filed by them.

5. Heard both sides and perused the appeal records and the submissions made by both the sides.

6. We find that the appellants have filed these appeals against the penalties imposed on them under the Sections 112(a)(i) and 114AA of the Customs Act, 1962. For ready reference, the said Sections are extracted below:

▪ **Section 112(a)(i):**

"Section 112 of the Customs Act, 1962: 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,-

(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 the value of the goods 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"

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

6.2. In the present case, we find that the allegation against the appellants is mis-declaration of the goods which were concealed in the consignment of the goods imported. In this regard, we observe that there is a misdeclaration in the quantity of tyres declared in the Bills of entry. We find that in respect of the Bill of Entry No. 9064531 dated 11.06.2022, as against the declared quantity of 440 pcs of mining tyres, on examination, 3308 pcs tyres of miscellaneous international brands were found concealed in the inner layer of big size tyres which were suitable to be used in motor cars/bus/trucks. In respect of the consignment covered under Bill of Entry No 8960103 dated 03.06.2022, as against the declared quantity of 440 pcs of mining radial tyres, 3337 pcs tyres, of miscellaneous international brands were found concealed in the similar manner in two containers suitable to be used in motor cars/bus/trucks. Thus, we find that the misdeclaration and concealment of the tyres came to light only after 100% examination of the goods.

6.3. It is pertinent to observe that for imposition of penalty under the sections 112(a) and 114AA of the Customs Act, it must be established that the appellants have connived with the importer in the alleged offence of mis declaration of the imported goods. We do not find any such evidence brought on record by the investigation. Further, as already observed hereinabove, it is a fact on record that the mis-declaration of the goods in terms of description, quantity and quality were came to light only after 100% examination of the goods by the investigation officers. The appellants, being the CB firm and the employee of the said CB Firm, had no means to find out the mis-declared goods which were concealed

inside the container. We also do not find any merit in the allegation that the appellants were aware of the misdeclaration of the goods by the importer and not disclosed the same to the customs authorities. No such evidence is available on record. Under such circumstances, we are of the view that there is no justification for imposition of penalties under Section 112(a) (i) and Section 114AA of the Customs Act, 1962.

6.4. With regard to the allegation that the appellant-CB, M/s. Sri Durga Impex and Logistics and Shri Srimanta Rakshit, the G-Card holder of the CB firm, have not done the KYC verification of the importer properly, we find that before filing the BEs in respect of the impugned consignments, the appellants had checked all import documents such as GST certificate, Aadhar Card, Pan Card, voter card, authorization letter, signature verified from bank etc. There were some error in the address mentioned in the GST registration, which the importer attributed to clerical mistake. However, it is on record that the importer was found to be available at the address and he has joined the investigation before the customs authorities. Thus, we observe that there is no truth in the allegation that the appellants failed to verify the KYC details of the importer.

6.5. Further, if there are any violations of the provisions of CBLR, 2018, by the appellants, then such violations by the Customs Broker are to be dealt in a separate proceeding as provided under the Customs Broker Licensing Regulations, 2018. Hence, we find that the impugned Show Cause Notice issued under Section 124 of the Customs Act, 1962, proposing penalty on the appellants under the said Act, is legally

not tenable. Moreover, we take note of the fact that on the basis of the same set of facts, the Department had ordered for suspension of the Customs Broker license of the appellant under Regulation 16(2) of the CBLR, 2018. The suspension order has been set aside by the CESTAT, Kolkata in Customs Appeal No. 75757 of 2023 [Final Order No. 77409 of 2023 dated 26.09.2023] ordering for restoration of the same. Thus, we are of the view that once separate proceedings have been initiated against the appellants under CBLR, 2018, for violation of the provisions of the said Regulations, no separate penalty is warranted on the appellants under the provisions of Customs Act, 1962, as no offence under the Customs Act, 1962 has been established against the appellants.

7. Thus, we hold that the penalties imposed on the appellants herein under Section 112(a)(i) and Section 114AA of the Customs Act, 1962 are legally not sustainable and hence, we set aside the same.

8. In the result, the penalties imposed on the appellants herein under Section 112(a)(i) and Section 114AA of the Customs Act, 1962, are set aside and the appeals filed by them are allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **24.11.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)