

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 248 of 2012

[Arising out of Order-in-Original No. 02/RKB/CCE/NCH/2012 dated 27.02.2012
passed by the Commissioner of Central Excise (Adjudication), New Delhi]

M/s. Achiever International

...Appellant

Through its Partner Sh. Vineet Gupta
28, Malkaganj Road,
Jawahar Nagar, Delhi - 110007

VERSUS

Commissioner of Customs – Delhi II

...Respondent

New Customs House,
IGI Airport, New Delhi

WITH

Customs Appeal No. 2253 of 2012

[Arising out of Order-in-Original No. 02/RKB/CCE/NCH/2012 dated 27.02.2012
passed by the Commissioner of Central Excise (Adjudication), New Delhi]

Commissioner of Customs – Delhi I

...Appellant

New Customs House,
IGI Airport, New Delhi

VERSUS

Shri Vineet Gupta

...Respondent

Partner, M/s. Achievers International
C-12, Ground Floor, Shakti Nagar Extension,
Delhi - 110052

APPEARANCE:

None for the Appellant-Assessee
Shri Girijesh Kumar, Authorized Representative for the Department

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 03.03.2025
DATE OF DECISION: **02.07.2025**

FINAL ORDER No. 50973-50974/2025

DR. RACHNA GUPTA

Present order disposes of two appeals arising out of one common Order-In-Original bearing No. 02/2012 dated 27.02.2012. One appeal bearing no. 248/2012 is filed by the importer and another appeal bearing no. 2253/2012 is filed by the department.

2. The relevant facts, in brief, are that Shri Vineet Gupta is a partner of M/s. Achiever International who imported goods i.e., DVDRs in the name of M/s. Achiever International and also in the names of the other IEC holders like M/s. Neeru Trading Co., Nihal Trading Co. and M/s. Ashoka Enterprises which were created and managed by Shri Vineet Gupta.

3. On the basis of intelligence reports, Directorate of Revenue Intelligence came to know that some importers were indulging in evasion of anti-dumping duty. On 21st June, 2008, premises of three importers Viz Neeru Trading Company, Ashok Enterprises and Nihal Trading Company were searched.

4. The proprietor of M/s Neeru Trading co. could not be located initially. Investigation with the CHAs and other connected persons indicated that the documents for clearances of consignments imported in the name of M/s Neeru Trading Co. were given by Shri Vineet Gupta, partner of M/s Achiever International. Further investigation revealed that all formalities like opening of accounts in the name of M/s Neeru Trading Co., obtaining IEC code in the name of Neeru Trading Co. and imports in the name of M/s Neeru Trading Co. were done only by Shri Vineet Gupta. The proprietor of M/s Neeru Trading Co. was subsequently, produced before the DRI officers who confirmed that the entire activity in the name of M/s

Neeru Trading Co. were indeed undertaken only by Shri Vineet Gupta. Goods in six containers were seized for violation of sections 7 and 11 of the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act). A show cause notice no. 50D/121/2017 dated 25.02.2009 was issued to M/s. Achievers International, its partner Vineet Gupta and Naveen Kumar sole proprietor of M/s Neeru Trading Company in respect of the goods contained in the six containers which were seized.

5. Investigations were continued into the past imports which revealed that Shri Vineet Gupta was handling the entire business of these fictitious firms. It was found that M/s. Neeru Trading (proprietor Shri Naveen Kumar), M/s. Nihal Trading (proprietor Shri Mahesh Kumar), and M/s Ashok Enterprises (proprietor Shri Deepak) in whose names goods were imported did not exist at all at the addresses given in the importer exporter codes (IEC) issued in their names. The imports were actually done by Shri Vineet Gupta in the name of these firms and he admitted this fact in his statement before the DRI. Shri Naveen Kumar the purported proprietor of M/s. Neeru Trading clarified in his statement that he was not the proprietor of that firm nor was he concerned with it in any way. He further said that the documents showing his name used to open a bank account in his name were all forged.

6. After completing the investigation, a show cause notice bearing no. 50D/121 dated 15.09.2010 was issued to Shri Vineet Gupta (proprietor of Achiever International) and to Shri Naveen

Kumar (purported proprietor of Neeru Trading) proposing to confiscate the following goods under section 111(d) of the Customs Act, 1962 read with sections 7 and 11 of the FTDR Act:

- a) Goods imported in the name of Nihal Trading through ICD Tughlakabad Delhi valued at Rs. 4,33,64, 906/- (Annexures A-1 and A-2 of the SCN);
- b) Goods imported in the name of Nihal Trading through Jawharlal Nehru Port Trust (JNPT), Maharashtra valued at Rs. 32,69,881/- (Annexures A-3 of the SCN);
- c) Goods imported in the name of Neeru Trading through ICD Tughlakabad Delhi valued at Rs. 1,71,97,393/- (Annexures B-1 of the SCN);
- d) Goods imported in the name of Neeru Trading through ICD Loni and Ballabgarh valued at Rs. 1,32,46,851/- (Annexures B-2 of the SCN);
- e) Goods imported in the name of Achievers International through ICD Tughlakabad, New Delhi valued at Rs. 6,66,30,381/- (Annexures C-1 of the SCN);
- f) Goods imported in the name of Achievers International through ICD Loni and Ballabgarh valued at Rs. 3,03,65,071/- (Annexures C-2 and C-3 of the SCN);

7. It was also proposed in the SCN to impose penalties under section 112 read with section 114A of the Customs Act. The SCN was made answerable to the jurisdictional Commissioners/ Additional/Joint Commissioners. By an order dated 28th September 2010, the Central Board of Excise and Customs appointed Commissioner (Adjudication), New Customs House, New Delhi as the common adjudicating authority to decide the proposals in the SCN in respect of all the imports. Accordingly, the impugned order was passed deciding the proposals in the SCN imposing penalty of Rs. 25,00,000/- on Shri Vineet Gupta under section 112 but not imposing any penalty on Shri Naveen Kumar. However, he did not order confiscation of the goods under section 111(d) of the Customs Act nor did he hold that the goods were liable to

confiscation under section 111(d). The reasons given by the Commissioner in the impugned order are that the goods were not available for confiscation (because these were past consignments) and that the imported goods were not 'prohibited goods' or restricted goods. There was also mis-declaration of the quantity of the goods or value. The relevant portion of the order is reproduced below:

"I do not find it appropriate and legal to invoke confiscation under Section 111(d) of the Customs Act, 1962 read with Section 7 & 11 of FTDR Act, 1992. For confiscation of the goods, it is a necessary pre-condition that goods should have been tainted with violation of Import Policy. In other words, either import of goods should have been prohibited or restricted which is not the case here. Further, under the provisions of Customs Act, there should have been mis-declaration with reference to the description or value or quantity of the goods to evade payment of duty. No such allegations have been made in the show cause notice. Therefore, I hold that the goods imported by such firms in the past are not liable for confiscation and drop invocation of proposal for confiscation of the goods.

For the above violations, I impose a penalty of Rs. 25,00,000/- (Rupees Twenty-Five Lacs only) under Section 112 read with Section 114A of the Customs Act, 1962, further read with Section 7 & 11 of Foreign Trade (Development & Regulation) Act, 1992 on Mr. Vineet Gupta, Partner of M/s Achievers International.

I do not impose any penalty on Mr. Naveen Kumar, Partner of M/s Neeru Trading Co. Being aggrieved the present appeal was filed."

8. Revenue is aggrieved by the finding of the Commissioner that the goods were not liable to confiscation under section 111(d) of the Customs Act. Shri Vineet Gupta is aggrieved by the penalty imposed on him. Being aggrieved of the said order, the present both the appeals were filed, one on 19.06.2012 by the appellant and another on 02.08.2012 by the department. The defects in the appeal were removed on 02.09.2013. However, the appeals got pending due to the issue of competence of officers of Directorate of Revenue Intelligence to issues show cause notices, being under

consideration by the higher courts. This tribunal, vide Final Order no. 54843-54880-2017 dated 05.07.2017, remanded the matter to the Commissioner. This order was assailed by Revenue before Hon'ble Delhi High Court and the Final Order was set aside and the matter was remanded to this Tribunal to decide. Meanwhile, as the question of competence of officers of DRI to issue the SCN was before the Supreme Court, these appeals could not be decided. After the decision of the Supreme Court in the review petition in the case of **Canon India**, that DRI officers were competent to issue the SCN, the appeals were listed. However, since September 2022, the matter was again before this tribunal but the appellant was seeking adjournment or was either not appearing before the tribunal. Resultantly vide order dated 01.09.2023 a warning of last opportunity for making final submission was served upon the appellant. Several subsequent opportunities were also given to the appellant but appellant did not appear. Further opportunity was therefore declined vide order dated 03.3.2025 and the matter was proceeded to be disposed of on the merits on record, in view of decision of Hon'ble Supreme Court in the case of **Balaji Steel Re-rolling Mills Vs. Commissioner of Central Excise & Customs reported as 2014 (310) ELT 209**, wherein it is held that appeal before Tribunal not to be dismissed in default but only on merits as the order under challenge and grounds of appeal are available to Tribunal for consideration and that no inherent power is vested with the Tribunal. Thus, the arguments on behalf of department heard.

9. We have heard learned Departmental Representative and perused the records of both appeals. Learned departmental

representative submitted that the impugned order, in so far as it holds that the goods imported by fictitious firms using fraudulently obtained IEC in the past were not liable for confiscation, is not legal and proper for the following reasons:

- i) Section 2(33) of the Customs Act defines 'prohibited goods' which includes any goods import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been fulfilled.
- ii) Section 7 of the FTDR Act explicitly prohibits import or export by any person without obtaining an IEC from the DGFT.
- iii) Section 11 of the FTDR Act prohibits import or export by any person except in accordance with the provisions of that Act
- iv) Thus, all the goods which were imported in the name of the fictitious firms by Shri Vineet Gupta using fraudulently obtained IECs were imported in violation of the prohibitions under sections 7 and 11 of the FTDR Act.
- v) Such goods, being imported in violation of the FTDR Act, are 'prohibited goods' as per section 2(33) of the Customs Act. The scope of Section 2(33) was examined by the Supreme Court in **Om Prakash Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (SC)** held so
- vi) The goods so imported are squarely liable to confiscation under section 111(d) of the Customs Act.
- vii) Therefore, the impugned order may be modified to the extent that the goods may be held liable to confiscation under section 111(d).

10. The Adjudicating Authority having perused the SCN and allegations made therein had observed that from the facts brought on record and evidence held that main brain behind all the functions non-existing firms was Shri Vineet Gupta. The adjudicating authority further observed that no concrete evidence has been brought on record by the DRI to support the allegations against Shri Naveen Kumar and held that there was no wrong doing

on the part of Shri Naveen Kumar and thus not liable for any penal action. The entire case is made out against Shri Vineet Gupta who is the real person behind the fictitious firms and liable for penal action. As regards invocation of Section 111(d) of the Custom Act, 1962 read with Section 7 & 11 of FTDR, 1992 for the purpose of confiscation of goods and imposition of redemption fine the adjudicating authority observed that such goods were not detained / seized at the material time. The goods were allowed clearance on payment of appropriate Customs Duty. The adjudicating authority also held that the import of goods was neither prohibited nor restricted under any law.

11. It is further submitted that the provisions of Section 7 & 11 of FTDR 1992 prohibit import or export without Importer-Exporter Code Number or by any person against the provisions of FTDR Act 1992. In the instant case forged documents were submitted to Karnataka Bank to get accounts opened in the name of M/s Neeru Trading Co. & other fictitious firms. Apart from this, forged signatures of Shri Naveen Kumar & others who had been projected as the proprietors of various fictitious companies by Shri Vineet Gupta had been appended on various documents submitted on behalf of M/s Neeru Trading Co. & others by Shri Vineet Gupta only. It was on the basis of wrong information submitted to DGFT that Shri Vineet Gupta got successful in getting an IEC Code in the name of fictitious companies. The above referred IEC Numbers thus could not have any legal sanctity in the eyes of law having been obtained by practicing fraud on the government and are such as if there is no IEC with the importing firm. The acts/omissions mentioned in

Section 7 & 11 would, therefore, operate as prohibitions contained in the statute and the goods imported in the name of fictitious firms holding fake / fraudulently obtained IEC Numbers became prohibited under Section 2 (33) of Customs Act, 1962. Further even if the goods were not available for confiscation, the liability for confiscation should have been adjudged under Section 111(d).

12. With respect to the appeal of the importer it is submitted that the adjudicating authority has held that Shri Vineet Gupta had committed intentional fraud by using fictitious firms and forging records. Therefore, Shri Gupta was found liable for stringent penal action under Sections 112 and 114A of the Customs Act, 1962, and Sections 7 & 11 of the FTDR Act. Shri Naveen Kumar was exonerated, as no wrong doing was found on his part. The case was primarily directed against Shri Vineet Gupta, who was held responsible for the violations. Hence there seems no infirmity in the order to this extent.

13. With these submissions the appeal filed by the department is prayed to be allowed and the appeal filed by the importer is prayed to be dismissed.

14. In its appeal, M/s. Achiever International assailed the impugned order on the following grounds:

- i) The SCN proposed confiscation of goods under section 111(d) of the Customs Act on allegation of violation of Sections 7&11 of the FTDR Act. However, on the same grounds, an earlier SCN dated 25.2.2009 had been issued and therefore, the SCN dated 15.9.2010 which culminated in the impugned order is hit by *res judicata*.
- ii) In the impugned order, the adjudicating authority transgressed his powers inasmuch as the IECs were issued

by the DGFT and they were not cancelled. Therefore, there was no violation of Sections 7 and 11 of the FTDR Act.

- iii) For any violations of FTDR Act, that Act itself provides for an adjudicating authority under section 13 and the Commissioner is not the authority competent to confiscate the goods or impose penalty.
- iv) The IEC holders had lent their IECs to the appellant (Achiever International) who imported the goods using them.
- v) The SCN in this case was not based on a separate and independent enquiries but is based on the earlier SCN dated 25.2.2009 and relies on the same set of evidence. The appellant cannot be penalized twice for the same action.
- vi) The adjudicating authority imposed composite penalty under two different and separate acts which is bad in law.
- vii) The order was passed ex parte by the Commissioner without any personal hearing to the appellant. Therefore, there was gross violation of principles of natural justice.
- viii) The appellant gained no extra profit by importing using the IECs of other firms and could have imported the goods in his own name.
- ix) DVDs and CDRs are freely importable as per the EXIM policy and there is no restriction on their imports.
- x) Penalty of Rs. 25,00,000/- imposed on the appellant is unwarranted and it may be set aside.

15. Having heard the department and perusing the record of both the appeals we observe and hold as follows:

15.1 Earlier also a show cause notice bearing no. 50D/121 dated 25.02.2009 in respect of import of DVD collectively valued at Rs. 2,21,89,692 in five containers at ICD Ballabgarh and in one container at ICD Loni by M/s Neeru Trading company was served upon Shri Vineet Gupta partner of M/s Achiever International (the present appellant) and Shri Naveen Kumar proprietor of M/s Neeru Trading Company, proposing confiscation of the goods imported by them and also proposing the penalty. The said show cause notice was also adjudicated vide earlier order in original no. 05/2009

dated 22.10.2009 confirming the absolute confiscation of the goods originally imported in the name of M/s Neeru Trading company and the penalty was also imposed on Shri Vineet Gupta under Section 112(a) and Section 114 AA of Custom Act 1962. This tribunal while adjudicating the appeal against the said O-I-O dated 22.10.2009 passed the final order no. C/115/11 dated 08.03.2011 it was held:

"The goods were imported in August, 2008 and that the goods are electronic goods, we deem it appropriate to allow the goods on payment of fine of Rs. 40 lakhs (Rupees Forty Lakhs only). This option should be exercised within three months from the date of receipt of this order."

15.2 Also the penalty under section 112(a) of the act against Shri Vineet Gupta was set aside in full. However, the penalty under 114 AA was confirmed. The department went into appeal before Hon'ble High Court which was decided vide order dated 28.03.2012 CUSAA no. 42/2011. M/s Achiever Intentional also had gone an appeal before High Court challenging the redemption fine imposed to be exorbitant. The Hon'ble High Court rather enhanced the redemption fine from Rs. 40 lakhs to 80 lakhs. Penalty under both the sections was held imposable and accordingly Rs. 10 lakhs penalty was imposed under Section 112(a) of Custom Act, 1962 also.

15.3 The present show cause notice dated 15.09.2010 is the result of the subsequent investigation with respect to the imports made by the same M/s Neeru Trading company. It was found that similar imports were made by same Shri Vineet Gupta in name of other companies as well which were found non existing but Vineet Gupta is found to be the proprietor of those companies also namely M/s

Nihal Trading company (which imported the goods of assessable value of Rs. 4,33,64,906/-) and M/s Ashoka Enterprises (which imported goods having assessable value of Rs.6,66,30,381/-).

15.4 We observe from the above Hon'ble High Court order dated 28.03.2012 that in terms of Section 18 of Foreign Exchange Regulation Act 1973, definition of prohibited goods under Section 2 (33) of the Custom Act and also under Rule 11 of the Foreign Trade (Development & Regulation) Rules 1933, the hon'ble court held that the goods in question (DVDs) were prohibited goods. Shri Vineet Gupta was held to be the master mind behind the import of prohibited goods. Resultantly, the High Court had confirmed the confiscation however the option to pay redemption fine was given. The value of redemption fine however was enhanced to Rs. 80 lakhs. In addition, the appellant was imposed with the penalties under both the section of the Custom Act i.e. under section 112(a) and section 114 AA of the Act.

15.5 Since the present show cause notice has no different facts from the previous show cause notice viz-a-viz the intent of Shri Vineet Gupta and the modus operandi of the imports. Thus we hold that Shri Vineet Gupta has rightly been held as the 'Master Mind' behind creating fictitious firms, getting bank accounts opened for these firms, Obtaining fake IECs and transacting the same business of importing electronics but illegally. The appellant has failed to make any submission or to produce any evidence in their support , rather has opted to remain absent.

15.6 The fact of obtaining IEC Code and opening of bank accounts has been admitted by him in his statutory statement recorded under Section 108 of the Customs Act, 1962 during the course of investigation by the officers of investigating agency, namely, DRI, Delhi. Secondly, when he approached the court for obtaining bail and he was granted conditional bail with an order to produce Shri Naveen Kumar who he claimed to be the owner of M/s. Neeru Trading Co. However, when Shri Naveen Kumar was produced before the officers, he denied knowledge of any such firm and further categorically stated that the application bearing his signature are forged one and he has not made any such application/signatures. This clearly establishes that Shri Vineet Gupta knowingly created the fictitious firms for import of electronic goods. Since he himself owned a firm in the name of M/s. Achievers International, he could have imported such goods in the name of his firm but he chose not to do so and instead used the names of other fictitious firms for illegal imports. Since Shri Vineet Gupta, the partner of M/s. Achievers International is a de-facto owner of the fictitious firms created by him including M/s Neeru Trading we find no infirmity when penalty under section 114AA of Customs Act is imposed upon him. Rather penalty under 112(a) of the Act is also held imposable for the same reasons and also based on **Hon'ble High court order dated 28.03.2012 in CUSAA No. 42/2011**, with respect to the order adjudicating the earlier SCN bearing No. 50D/121/2017 dated 25.02.2009. Present SCN is the result of further investigation in the previous SCN revealing more fictitious firms than/ including M/s Neeru Trading of previous SCN.

Hence we do not find any infirmity in the order when the penalty has been imposed upon Shri Vineet Gupta, the proprietor of the appellant.

15.7 Coming to the grievance in department's appeal, we observe that Section 2(33) of the Customs Act, 1962 defines prohibited goods as any goods import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported has been complied with. The Hon'ble Supreme Court in the case of **Om Prakash Bhatia Vs. Commissioner of Customs reported as 2003 (155) ELT 423 (SC)** defined the scope of prohibited goods under Section 2(33) of the Customs Act, 1962 and held as follows:

"9. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods."

15.8 We also observe that the provisions of Section 7 and 11 of FTDR, 1992 prohibit import or export without Importer-Exporter Code Number or by any person against the provisions of FTDR Act, 1992. The acts/omissions mentioned in Section 7 and 11 would, therefore, operate as prohibitions contained in the statute. Therefore, the goods imported in the name of fictitious firms holding fake/fraudulently obtained IEC numbers are prohibited under Section 2(33) of the Customs Act, 1962. The goods being prohibited were liable for confiscation under Section 111(d) of the Customs Act, 1962. But the adjudicating authority below has held that at the time of detection of fraud relating IEC, the goods were not physically available for the detention/seizure/confiscation etc. and the goods were not tainted with violation of import policy nor were there any allegations of mis-declaration description/value/quantity.

15.9 We have perused Section 111(d) of the Customs Act, 1962. It reads as follows:

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

It is clear that goods imported or attempted to be imported contrary to any law for the time being in force are liable to confiscation. Thus, once the import is contrary to any law, the goods become liable to confiscation. The Commissioner clearly erred in holding that only 'prohibited goods' or 'restricted goods' were liable confiscation. Section 111(d) does not say so. Even if the

goods are not prohibited goods but they were imported contrary to any prohibition, they will be liable to confiscation. Sections 7 and 11 of the FTDR Act make it clear that goods can be imported only after obtaining an IEC. Violating these provisions, Shri Vineet Gupta imported the goods using IECs obtained in the name of fictitious companies. For this reason, the goods were clearly liable to confiscation under section 111(d).

15.10 At any rate, once the goods were imported violating the provisions of FTDR Act, they become prohibited goods as held by Supreme Court in **Om Prakash Bhatia**. Hence the imported goods are prohibited goods, should have been held liable to confiscation even if they were not available for actual confiscation.

15.11 It must also be pointed out that penalty under section 112 can be imposed for acts and omissions which render goods liable to confiscation under section 111. Thus, even if the goods are not actually confiscated (if they are not available), if they are liable to confiscation under section 111, penalty can be imposed under section 112. The Commissioner imposed penalty on Shri Vineet Gupta under section 112.

15.12 As far as the grounds of appeal taken by M/s. Achiever International is concerned, we find that it does not deny that it had imported goods using the IEC in the names of other firms which is the explicit allegation in the SCN and the finding in the impugned order. This factual position is consistent with the SCN and the finding in the impugned order. In fact, in ground D, the appellant

specifically states that other firms 'had lent' their IECs and it had imported the goods using those IECs.

15.13 Achiever International's submission is that since an SCN dated 25.2.2009 was earlier issued and in pursuance of the same investigation the second SCN dated 15.9.2010 was issued, it is hit by the principle of *res judicata*. We find that records show that the SCN dated 25.2.2009 was in respect of the goods which were seized, this SCN deals with the past imports. Thus, there is no overlap between the two. We do not find that the matter is hit by *res judicata*.

15.14 Another submission is that DGFT had issued the IEC and the Commissioner transgressed his powers while confirming the confiscation of the goods under the provisions of FTDR Act. This submission is baseless. In the first place, in the impugned order, the Commissioner did not confiscate or hold the goods liable to confiscation. Secondly, the confiscation in the SCN was proposed under section 111(d) of the Customs Act and not under the FTDR Act. Section 111(d) renders any goods which have been imported in violation of any law for the time being in force liable to confiscation. Therefore, the confiscation was proposed under the Customs Act only to decide which the Commissioner was perfectly competent. If section 111(d) is invoked, it must also be said as to which other law was violated while importing the goods; in this case, it was FTDR Act. Therefore, the confiscation was proposed under section 111(d) of the Customs Act read with sections 7&11 of the FTDR Act. Section 7 requires the importer to obtain an IEC and section 11

states that any imports in violation of the FTDR Act is prohibited. There is nothing in the FTDR Act which provides for any IEC holder to lend his IEC to somebody else or for anyone to import goods borrowing someone else's IEC. The fact that imports were made by Achiever International in the name of other IECs is not in dispute and is in fact, explicitly admitted in this appeal. Therefore, there is no force in this submission of Achiever International.

15.15 Another submission is that for action under FTDR Act, there is a separate provision for adjudicating authority under section 13 of the FTDR Act and therefore, the proceedings in the impugned order is without authority. We find no force in this argument because the proceedings in the impugned order are under the Customs Act and not under the FTDR Act.

15.16. Insofar as the submission that the adjudicating authority imposed composite penalty under two different separate acts is concerned, we find that it is contrary to the facts. The penalty has been imposed under section 112 of the Customs Act only. The provisions of the FTDR Act have been only been referred to and no penalty has been imposed under that Act.

15.17 The submission that the impugned order was passed *ex parte* is without force. Details of opportunities of personal hearing fixed have been described at length in paragraphs 10, 10.1, 10.2 and 10.3 of the impugned order. If the appellant does not avail of the opportunity of personal hearing, it does not mean that the Commissioner had violated principles of natural justice.

15.18. Another submission of the appellant is that it had not gained anything extra and it could have imported goods using its IEC. We find that if the appellant had obeyed the provisions of FTDR Act and imported goods using its own IEC, there would have been no case for the department nor any SCN. The SCN was issued only because the appellant had imported goods violating the provisions of sections 7&11 of the FTDR Act which fact is also admitted in the appeal before us saying 'that the IEC holders had lent their IECs to the appellant.' This argument is like someone driving on the wrong side of the road claiming that he should not be penalized because he had not gained anything by breaking the law and could have as well driven on the correct side.

15.19 The appellant also submitted that DVDs and CDRs were freely importable and were not prohibited goods or restricted goods. We agree that if the DVDs and CDRs were imported following the provisions of FTDR Act, they could have been imported freely. Merely because the goods are not restricted or prohibited as per the foreign trade policy, it does not mean that they can be imported without an IEC or using IECs issued in the names of some other fictitious firms.

15.20 Lastly, it is prayed that the penalty of Rs. 25,00,000/- imposed on the appellant may be set aside. Having considered the total value of goods imported by the appellant through different ports and ICDs in the names of several fictitious firms, we find that the penalty of Rs. 25,00,000/- on the appellant is quite just and reasonable.

16. In light of above discussion, we uphold the penalty imposed on Shri Vineet Gupta in the impugned order. However, modify the impugned order holding that the imported goods were liable for confiscation in terms of Section 111 (d) of the Customs Act, 1962 even though they were not actually available for confiscation. With these observations the appeal filed by M/s Achiever International is hereby dismissed whereas the one filed by the department is hereby allowed.

[Order pronounced in the open court on **02.07.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

HK