CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Court No.5

Customs Appeal No. 86159 of 2015

(Arising out of Order-in-Appeal No. 14(Gr.IV)2015(JNCH)(Appeal)-II dated 24.02.2015 passed by the Commissioner of Customs (Appeals-II), JNCH, Nhava Sheva)

Narendra Forwarders Pvt. Ltd. **Appellant**
101/28, Devkrupa Building,
Raichur Road, Dana Bunder,
Mumbai 400 009.

Vs.

Commissioner of Customs (Import), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

Appearance:

Shri J.C. Patel, Advocate, for the Appellant
Shri C.S. Vinod, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

Date of Hearing: 26.11.2025
Date of Decision: 15.12.2025

FINAL ORDER No. 86917/2025

PER: DR. SUVENDU KUMAR PATI

Sustainability of penalty confirmed by the Commissioner (Appeals), vide his above referred order, on the licensed Customs House Agent (CHA), after classification dispute between the importer and the department was settled in favour of the importer, is questioned by the CHA before this forum.

2. Facts of the case would go to reveal that between November 2007 and December 2007, the importer M/s. Wadhwa Associates and Realtors Pvt. Ltd. had engaged the Appellant CHA for clearance of the goods, viz. 'fabricated aluminium products including glass/accessories' through three Bills of Entry. On the basis of invoice issued by exporter, packing list, Bills of Lading etc. for clearance of the goods, classification was claimed under CTH 73.08 that provides for exemption from additional payment of

duty of customs under serial No.64 of Notification No.3/2005 dated 24.02.2005. All three Bills of Entry were assessed by the proper officer under CTH 73.08 with the benefit of exemption but in September 2010, DRI investigated into the matter questioning classification made by the Appellant, which is stated to have been correctly classifiable under CTH 76.10 and not under 73.08, in which case exemption from additional duty of customs was not available. Being pointed out by the respondent department, the importer had paid the differential duty of Rs.27,87,692/- along with interest on 14.09.2010, but the Appellant CHA was issued with a show cause notice with a proposal for penalty leviable under Section 112(a) of the Customs Act. The Appellant challenged the said show cause notice issued to it unsuccessfully that resulted in confirmation of penalty of Rs.1,00,000/- and its appeal before the Commissioner (Appeals) was dismissed for non-compliance of interim order directing payment of pre-deposit of Rs.5,00,000/-. Thereafter the Appellant carried the matter upto the Tribunal and got the appeal remanded back to the Commissioner (Appeals) for *de novo* hearing on merit without asking for any pre-deposit. In the meantime, in respect of the importer firm, the matter also had travelled upto this Tribunal, which had given a finding that the goods are correctly classified by the importer entitling it for availment of the benefit available for such goods but despite the said order being produced before the Commissioner (Appeals), he confirmed the penalty in the *de novo* proceedings. Hence this appeal.

3. During the course of hearing of the appeal, learned counsel for the Appellant, Mr. J.C. Patel, Advocate, submitted that since the importer had paid the entire duty along with interest as determined by the department before issue of show cause notice, there is statutory bar under Section 28(2B) of the Customs Act, 1962 against the issue of such show cause notice and, therefore, the same is unsustainable in law. He further submitted that when penalty on the importer has been set aside by this Tribunal vide its order dated 17.01.2014, penalty on the Customs Broker under Section 112(b) of the Customs Act is not at all sustainable in view of several precedent decisions on this issue, including the one passed by this Tribunal in the case of Kwick Cargo Tracers & Lifters

vs. Commissioner of Customs (NS-III) and other decisions passed on this issue in the case of Chakiat Agencies vs. Commissioner of Customs, reported in 2023 (385) ELT 270; Manjunath Shipping P. Ltd. vs. Commissioner of Customs, reported in 2019 (369) ELT 1010; Union Clearing Service vs. Commissioner of Customs, reported in 2018 (361) ELT 381; HIM Logistics P. Ltd. vs. Commissioner of Customs, reported in 2016 (340) ELT 388 and Brijesh International vs. Commissioner of Customs, reported in 2017 (352) ELT 229.

Further submission of learned counsel for the Appellant is that mere claiming of a particular classification or exemption does not amount to misdeclaration of facts even in a case of dispute between the importer and the department. In support of his stand, he placed his reliance on the judicial decisions in the case of Northern Plastic Ltd. vs. Commissioner of Customs, reported in 1998 (101) ELT 549 (SC); Asian Rubber Works vs. Commissioner of Customs, reported in 1999 (109) ELT 401; Jay Kay Exports vs. Commissioner of Customs, reported in 2004 (163) ELT 359 and Commissioner of Customs vs. V. Gaurav Enterprise reported in 2006 (193) ELT 532.

He, therefore, pleaded that the order passed by the Commissioner (Appeals) confirming penalty against the Appellant is required to be set aside.

4. Learned AR Mr. C.S. Vinod objected to such submission made on behalf of the Appellant. While supporting the reasoning and rationality of the order passed by the Commissioner (Appeals), he pointed out that there is a clear finding of the Commissioner (Appeals) in his order at para 12 that the Appellant had admitted in its statement that they have misclassified the goods as per their importer's instruction and, therefore, the penalty imposed on the Appellant was rightfully imposed that needs no interference by this Tribunal.

5. We have gone through the appeal paper book, relied upon case laws, relevant portion of the order in which the Appellant's admission has been recorded and also gone through the statement of the Appellant CHA recorded under Section 108 of the

Customs Act, 1962 after calling for the same from the advisories. As could be noticed, nothing is available in the said statement that would put the statement in the category of admission, as contemplated under Section 58 of the Indian Evidence Act. Going by answer given to question No.2 as well as to question No.7, it can be seen that the Appellant had informed the department through the statement that seeking of availment of the said notification for three clearances was done under the instruction of the importer and he had gone through the said notification thoroughly, which indicates that exemption claimed was not proper and it was wrongly claimed under the said notification. This very statement can never be equated with what is being noted in para 12 of the order passed by the Commissioner (Appeals) 'that they have misclassified the goods as per the importer's instruction' since claiming the benefit of the notification that goes with a classification, which was also held to be proper by this Tribunal, cannot be equated with misclassification so as to avail the benefit provided under the exemption notification. This being the facts available on record, when all other submissions made by the Appellant, including the issue of show cause notice, after receipt of differential duty plus interest as well as non-sustainability of penalty under Section 112(b) on the Appellant CHA after penalty under Section 114A has been set aside by the Tribunal etc., are found to be in favour of the Appellant. Hence the order:

The order

The appeal is allowed and the impugned order-in-appeal No. 14(Gr.IV)2015(JNCH)(Appeal)-II dated 24.02.2015 passed by the Commissioner (Appeals) is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 15.12.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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