

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH-COURT NO. 1**

**CUSTOMS APPEAL NO. 50324 OF 2021  
WITH  
CUSTOMS CROSS APPEAL NO. 50204 OF 2021  
AND  
CUSTOMS OTHER APPLICATION NO. 50196 OF 2025**

[Arising out of Order-in-Original No.  
09/2020/AAYUKTA/SEEMASHULK(NI)JODHUR/HQRS/JAIPUR dated 27.10.2020  
passed by the Commissioner of Customs(Preventive) Jodhpur]

**COMMISSIONER, CUSTOMS  
(PREVENTIVE)-JAIPUR**

**.....APPELLANT**

HQRS: AT NCR, Building, Statue Circle,  
C Scheme, Jaipur-302005

Vs.

**M/S PELICAN QUARTZ STONE**

**....RESPONDENT**

B-57, MIA, 2<sup>nd</sup> Phase, Bansi,  
Jodhpur, Rajasthan-342005

**Appearance:**

Shri Rakesh Kumar, Authorised Representative for the Appellant  
Shri C.M. Sharma, Consultant the Respondent

**AND**

**CUSTOMS APPEAL NO. 51692 OF 2021**

[Arising out of Order in Original No.  
09/2020/AAYUKTA/SEEMASHULK(NI)JODHUR/HQRS/JAIPUR dated 27.10.2020  
passed by the Commissioner of Customs(Preventive) Jodhpur]

**M/S PELICAN QUARTZ STONE**

B-57, MIA, 2<sup>nd</sup> Phase, Bansi,  
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**COMMISSIONER, CUSTOMS  
(PREVENTIVE)-JAIPUR**

**....RESPONDENT**

HQRS: AT NCR, Building, Statue Circle,  
C-Scheme, Jaipur-302005

**Appearance**

Shri C.M. Sharma Consultant for the appellant  
Shri Rakesh Kumar, Authorised Representative for the Revenue

**CORAM:**

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

**FINAL ORDER NO'S. 50762-50763 /2025**

**Date of Hearing : 28/04/2025**

**Date of Decision: 26/05/2025**

**P. V. SUBBA RAO**

The Order dated 27.10.2020 passed by the Commissioner of Customs (Prev.) Jaipur I<sup>1</sup> is assailed in these two appeals filed by the Revenue and M/s. Pelican Quartz Stone<sup>2</sup>. The impugned order decided the proposals made in the Show Cause Notice dated 27.4.2020<sup>3</sup> issued by the Directorate General of Revenue Intelligence<sup>4</sup> to the assessee and it's partner Shri Sandeep Kabra<sup>5</sup> proposing to:

- a) Reject the declared classification of 'Engineered Quartz Stone' under **Customs Tariff Item<sup>6</sup> 68159990** in several Shipping Bills filed by the assessee and exported during 2017 and 2018 and to re-assess the Shipping Bills classifying it under **CTI 68101990**;
- b) Recover from the assessee an amount of Rs. 69,32,401/- said to have been wrongly availed and utilised using scrips

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**1** Impugned order  
**2** Assessee  
**3** SCN  
**4** DRI  
**5** Kabra  
**6** CTI

under the Merchandise Export from India Scheme<sup>7</sup> under section 28AAA of the Customs Act, 1962<sup>8</sup>;

- c) Appropriate an amount of R.s 73,40,209/- paid by the assessee during investigation;
- d) Hold the exported goods with FOB value of Rs. 11,63,45,015/- liable for confiscation under section 113(i) of the Act;
- e) Impose penalties on the assessee under Sections 114(iii) and 114AA of the Act; and
- f) Impose penalties on Shri Kabra under section 114(iii) and 114AA of the Act.

2. In the impugned order, the Commissioner confirmed the proposals at (a), (d) and (e) above and dropped the proposals at (b), (c) and (f).

3. Revenue filed Customs Appeal No's. 50324 of 2021 as it is aggrieved that the Commissioner did not confirm the demand of duty under Section 28AAA and that he did not impose any penalties under section 114(iii) and 114AA on the assessee and Shri Kabra. There is some error in this appeal itself as the Commissioner had imposed penalty under Section 114(iii) on the assessee. The assessee filed cross-objection No. 50204 of 2021 in Revenue's appeal.

4. The assessee also filed Customs Appeal No. 51692 of 2021 assailing the impugned order and praying that it may be set aside. The same prayer is made in the cross objections which it filed in the Revenue's appeal also.

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**7** MEIS  
**8** Act

5. We have heard learned counsel for the assessee and the learned authorised representative for the Revenue and perused the records.

**Revenue's submissions**

6. The submissions of the learned authorised representative for the Revenue are as follows:

- (i) CBEC had issued directions to the field formations by letter F.No.334/1/2012-TRU dated 1.6.2012, regarding recovery of duty in case of an instrument issued under Foreign Trade (Development & Regulation) Act, which says as follows:

*"Field formations are advised to issue demands as soon as DGFT/concerned regional authority initiates action for cancellation of **an instrument but the matter may be decided only after the instrument has been cancelled by DGFT.**"*

- (ii) The Commissioner did not mention anything about the cancellation of the MEIS scrips by DGFT in the adjudication order. He, therefore, erred in taking the decision without considering the decision by DGFT. The OIO was, therefore, pre-mature.
- (iii) As per para 2.57 of the Foreign Trade Policy, the issue of classification of the goods under ITC (HS) has to be done by DGFT authorities only.
- (iv) The assessee had wrongly classified the exported goods and thereby obtained MEIS scrips and

the duty benefit so wrongly availed can be recovered from the assessee under section 28AAA.

- (v) The Commissioner erred in dropping the demand under section 28AAA and also erred in not imposing penalties

**Assessee's submissions**

7. Learned counsel for the assessee made the following submissions:

- (i) The Shipping Bills were filed and the goods were allowed to be exported and their assessment was final which cannot be re-opened by issuing a Show Cause Notice alleging mis-classification.
- (ii) MEIS scheme falls exclusively under the jurisdiction of DGFT and Customs officers have no locus standi in the matter.
- (iii) Demand and recovery under section 28AAA is permissible only where 'such instrument is utilised under the provisions of the act' and there is nothing in the SCN to show that the instruments were utilised and therefore, the Commissioner correctly dropped the demand.
- (iv) Demand under section 28AAA is permissible only if the MEIS scrip is obtained by collusion, wilful mis-statement or suppression of facts and none of these elements were even alleged, let alone, established in the SCN.

(v) The exported goods were correctly classified under **CTI 68159990** and it has been accepted by all authorities as evidenced by the following documents:

- a. Approval of Development Commissioner, NOIDA, SEZ dated 19.4.2016;
- b. Sanction order for the EOU issued by the Assistant Commissioner dated 13.5.2016;
- c. Intimation for sealing given to the jurisdictional central excise officers;
- d. ARE-1 and ER-2 forms under Central Excise Act, 1944 for 100% EOU filed by the assessee and endorsed by the officers;
- e. Proof of Export in Annexure 19 for January 2017;
- f. GSTR-1 for July 2017

(vi) Thus, the allegation of mis-classification of the exported goods and consequently imposing penalties are not sustainable.

(vii) The impugned order may be set aside and the appeal may be allowed.

8. We have considered the submissions advanced by both sides and perused the records.

9. The proposal in the SCN was to re-assess the Shipping Bills under which goods had already been exported by changing the classification and consequently hold that the exported goods were liable to confiscation under section 113 and to impose penalties under section 114 and 114AA of the Act. If the

classification is changed as proposed in the SCN, it is said that the appellant would NOT have been entitled to MEIS scrips which were issued to it by the DGFT. Therefore, it was proposed to recover the value of the scrips under section 28AAA.

10. At the root of these proposals is re-assessment of the Shipping Bills under which goods were already been exported by changing the classification. The SCN does not indicate under what authority such re-assessment was proposed. The Commissioner also does not indicate in the impugned order under what authority he re-determined the classification of the goods in the Shipping Bills in which the exports had already taken place.

11. The officers of Customs can exercise only such powers as are conferred on them by or under the Act. Section 5(1) of the Act reads as follows:

**"Section 5. Powers of officers of customs.**

(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act."

12. Thus, there must be a provision for any action under the Act and the power for that action must lie with the officer who takes the action. When there is no provision at all in the Act, no officer of Customs (including DRI) can take any action.

13. If we examine the issue of classification more closely, we find that it is a part of assessment. Section 2(2) of the Act which reads as follows clarifies this position:

**"2. Definitions.—**In this Act, unless the context otherwise requires,—

(2) **'assessment'** means **determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable**, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the

Customs Tariff Act) or under any other law for the time being in force, **with reference to—**

**(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;**

**(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;**

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

**and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;”**

14. Classification and valuation of the imported goods in a Bill of Entry or export goods in a Shipping Bill are part of assessment and the assessment could be provisional or final and it could be self-assessment by the importer/exporter or re-assessment by the officer and the assessment could be even where the duty payable is NIL. On most goods, there is no export duty and hence the Shipping Bills are assessed to NIL duty. Nevertheless, it is an assessment of the Shipping Bill.

15. The next question is who is competent to do the assessment. As per section 17, the importer or exporter has to self-assess the duty and the proper officer can re-assess the duty and if the re-assessment is different from the self-assessment, unless the importer/exporter gives his acceptance in writing, the proper officer has to pass a speaking order. Evidently, the exporter or the proper officer may assess the import duty/export duty as NIL. Section 17 reads as follows:

**"Section 17. Assessment of duty. -**

**(1) An importer entering any imported goods under section 46 , or an exporter entering any export goods under section 50 , shall, save as otherwise provided in section 85 , self-assess the duty, if any, leviable on such goods.**

(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

**(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.**

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."

16. Thus, the exporter can assess the Shipping Bill and the proper officer can re-assess a Shipping Bill. The question which may arise is what if more than one proper officers have the jurisdiction to re-assess the Shipping Bills. In such a case, once one 'proper officer' exercises his jurisdiction and re-assesses a Shipping Bill, it automatically precludes every other proper officer

from exercising the jurisdiction in that shipping bill. Assessment is a quasi-judicial function and just as once one competent court takes cognizance of a case, other courts do not exercise jurisdiction in that case, once the assessment of a document (Bill of Entry or Shipping Bill) no other proper officer can exercise jurisdiction. It was held so by the **Supreme Court in Commissioner of Customs vs. Canon India Pvt Ltd.,<sup>9</sup>**

"164. The contention that Section 97 could not have overruled the finding of fact relating to the actual exercise of jurisdiction in Canon India (supra) is untenable for the following reasons:

(a).....

(b) As discussed above, the functions of assessment and re-assessment under Section 17 and the recovery of duty under Section 28 are distinct. Therefore, the exercise of functions under Section 17 can only act as a "jurisdictional fact" for the purpose of excluding the jurisdiction of other proper officers empowered under that section for the exercise of the rest of the functions specified therein. **Similarly, the exercise of the function of issuing show cause notices under Section 28 by a particular proper officer serves as a jurisdictional fact which would exclude the jurisdiction of other proper officers empowered under Section 28."**  
(emphasis supplied)

17. The proper officer who is re-assessing the Shipping Bill or Bill of Entry may, at times, have to change his re-assessment if new facts come to light. For instance, if the examining officer finds that the goods were not as per the declaration or the documents do not match with the Shipping Bill, he may refer the matter back to the proper officer to re-assess the goods. The re-assessment will come to an end once the goods are exported in case of Shipping Bills and once the officer gives an order clearing the goods for home consumption in case of imports. Once exported, the export goods will cease to be 'export goods' and

the exporter will cease to be the exporter. Sections 2(18), 2(19) and 2(20) clarify this position and they read as follows:

“(18) ‘export’, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;  
 (19) ‘export goods’ means any goods **which are to be taken out of India to a place outside India;**  
 (20) ‘exporter’, in relation to any goods **at any time between their entry for export and the time when they are exported**, includes any owner, beneficial owner or any person holding himself out to be the exporter;”

18. Similarly, once the goods are cleared for home consumption the importer will no longer be the importer and the goods will no longer be imported goods. Sections 2(23), (25) and (26) clarify this position and they read as under:

“(23) ‘import’, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;  
 (25) ‘imported goods’ means any goods brought into India from a place outside India but **does not include goods which have been cleared for home consumption;**  
 (26) ‘importer’, in relation to any goods **at any time between their importation and the time when they are cleared for home consumption**, includes any owner, beneficial owner or any person holding himself out to be the importer;”

19. Once the process of assessment of the Bill of Entry is completed by issue of the order permitting clearance of goods for home consumption and once the process of assessment of a Shipping Bill is completed and the goods are exported, they cease to be imported goods and export goods respectively. There cannot be any assessment or re-assessment thereafter.

20. While there cannot be anymore assessment, remedies against the assessment are available under the Act to seek modification of the assessment. These are:

a) **Appeal to the Commissioner (Appeals) under section**

**128:** Both sides can assail before the Commissioner(Appeals) any Bill of Entry or Shipping Bill within the prescribed time. There is no limitation as to which part of the assessment can be assailed or on what grounds it can be assailed. This section reads as follows:

**"Section 128. Appeals to Commissioner (Appeals). - (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:**

**Provided** that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."

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b) **Show Cause Notice under section 28:** The proper officer can issue a notice under section 28 and modify the assessment and recover duty. However, this power under Section 28 is restricted by WHO (the proper officer), WHEN (within the normal period or extended period of limitation) and WHY (to recover duty not paid not levied, short paid, short levied or erroneously refunded). The proceedings under section 28 cannot be used to modify the assessment for any other purpose. The relevant portion of section 28 is as follows:

**"Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. -**

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the

reasons of collusion or any wilful mis-statement or suppression of facts,-

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

**Provided** that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

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(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

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- c) **Section 149:** Section 149 empowers the proper officer to authorise any document to be amended including Bills of Entry and Shipping Bills. However, if the amendment is sought after the goods have been cleared for home consumption (in case of imports) or for export (in case of exports) the amendment can be only based on the documentary evidence which was available at the time of their clearance. This section reads as follows:

**"Section 149. Amendment of documents. -**

Save as otherwise provided in sections 30 and 41 , the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed:

**Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.**

**Provided** further that such authorisation or amendment may also be done electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

**Provided** also that such amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal."

- d) **Section 154:** Section 154 provides for correction of clerical and arithmetical errors in the order by the officer. This section reads as follows:

**"Section 154. Correction of clerical errors, etc. -**

Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be."

21. Either party aggrieved by the assessment can appeal to the Commissioner (Appeals) under section 128. Revenue can also modify the assessment by issuing an SCN under section 28 and adjudicating it but this can be done only to recover duties not levied short levied, not paid, short paid or erroneously refunded. Section 149 is a power which the officer can exercise if the assessee seeks an amendment to the Bill of Entry or Shipping Bill. Section 154 empowers the officer to correct arithmetical or clerical errors in his order.

22. In case of Shipping Bills which have been assessed and goods have already been exported, if there is no proposed recovery of export duty, the only remedy available to the Revenue is to assail the assessment through an appeal to the Commissioner (Appeals) under section 128. Section 28 will not apply because there is no duty. Section 149 is open to the exporter to request the officer for and the officer may permit changes. Section 154 does not help except where the officer had committed any clerical errors.

23. Clearly, the Principal Additional Director General of DRI issued the SCN without any authority of law to reassess the Shipping Bills where the goods have already been exported. Naturally, he also did not cite any section under which he proposed the re-assessment. Similarly, in the impugned order, the learned Commissioner also re-determined the classification in the Shipping Bills where the goods had already been exported without any authority of law and he also did not cite any section in which he did so.

24. Further, classification is only a question of opinion of different persons. Some classified or accepted the classification of the goods under **CTI 68159990** such as:

- a. The assessee
- b. The Development Commissioner, NOIDA, SEZ dated 19.4.2016 who issued the licence;
- c. The Assistant Commissioner who issued sanction order dated 13.5.2016 for the EOU;

- d. The central excise officers to accepted the intimations and ARE-1 and ARE-2 from the assessee; and
- e. The GST authorities who accepted GSTR-1 for July 2017

25. The Principal ADG, DRI who issued the SCN and the Commissioner who passed the impugned order held the view that the goods should be classified **CTI 68101990**.

26. Since we found that the very proposal to re-determine the classification of the goods in the shipping Bills after the goods have been exported is without authority of any law, it is not necessary for us to examine which is the correct classification of the goods.

27. Demand of customs duty under section 28AAA is permissible only if 'the scrips have been obtained through fraud or wilful misstatement or suppression of facts' and if they have been utilised. There is no assertion, let alone evidence, that the scrips have been obtained through fraud or wilful misstatement or suppression of facts in the SCN. There is also no evidence that the scrips have been utilised. The demand under Section 28AAA also cannot be sustained on this ground alone and the Commissioner was correct in dropping the demand.

28. It was proposed in the SCN to confiscate the goods under section 113 (i). The Commissioner did not confiscate the goods for the reason that they were not available. However, he recorded in paragraph 4.13 of his order that they were liable to

confiscation. We find that as per Section 113 of the Act, certain categories of goods attempted to be exported will be liable to confiscation. Clause (i) of this section is relevant for the purpose of this case. It reads as follows:

**"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 ;  
\*\*\*\*"

29. The 'entry made under the Act' in this case is the Shipping Bill. It is not the case of the Revenue that the goods which were exported did not correspond to what was declared in the Shipping Bill. Revenue's case is that the classification of the goods in the Shipping Bill was not correct. Classification of goods is a matter of opinion and it is part of the assessment. The exporter may classify the goods under a **CTI**, the proper officer may change it to a different **CTI** and if an appeal is filed, the **CTI** may be changed at any stage of appeal. Merely because someone or some officer may have a different view about the classification, the goods will not become liable to confiscation. In this case, the classification of the goods according to the assessee, as per the licence issued by the Development Commissioner and the Central Excise officers who cleared the goods is the same and it was indicated in the Shipping Bills.

30. If DRI takes a different view about the classification, it does not render the goods liable to confiscation. There is no obligation on the exporter to anticipate if DRI would ever look into his

exports and if so, what classification DRI would find acceptable and file Shipping Bills accordingly nor is it humanly possible to do so. The exporter's responsibility ends with filing the shipping bill classifying the goods as per his understanding. If the proper officer changes the classification in re-assessment, his view would prevail it being part of re-assessment. If either side is aggrieved, an appeal can be filed before Commissioner (Appeals).

**31. We wish to make this legal position clear. If the goods are exported, if DRI or Audit or Preventive or some other officer takes a different view of the classification of the goods, such views do not make the goods liable to confiscation. Otherwise, it would lead to complete anarchy. Any DRI, audit, preventive officer can make any imported goods liable to confiscation under section 113(i) by simply taking a different view about the classification. Such an interpretation of section 113(i) cannot be countenanced.**

32. Penalty under section 114 can be imposed for acts or omissions which render goods liable to confiscation under section 113. 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.”

33. The case of the Revenue is that the assessee, by filing Shipping Bills classifying them according to its understanding (and the understanding of the Development Commissioner, Central Excise officers, etc.) and NOT classifying them according to the view subsequently taken by DRI during its investigation, rendered the goods liable to confiscation under section 113(i) and rendered itself liable to penalty under section 114. **Nobody has an obligation to either anticipate or to conform to the views of DRI in classifying goods in Shipping Bills. The imposition of penalty on the assessee under section 114 in the impugned order cannot be sustained and need to be set aside.**

34. Revenue is aggrieved that the Commissioner did not impose penalty under section 114AA on the assessee and Shri Kabra as proposed in the SCN. 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.”

35. As discussed above, there is no dispute about any material particulars in the Shipping Bills and only difference of opinion is

regarding the classification of exported goods. The declaration in the Shipping Bill was as per the understanding of the exporter and consistent with the views of the Development Commissioner, the Assistant Commissioner who issued the Sanction Order for the EOU and the Central Excise Officers who signed/retained the ARE 1& ER-2 Form. DRI took a different view in the SCN. The declaration in the Shipping Bills does not become false or incorrect simply because DRI takes a different view of the classification. No exporter has an obligation to conform to any future views of any officer of DRI, Audit, Preventive, etc. Penalty under section 114AA, therefore, cannot be imposed anyway in the matter regardless of the merits of the classification.

**36. To sum up:**

(a) After the goods are exported, the only options available to the Revenue to modify the assessment of the Shipping Bills are an appeal before Commissioner (Appeals) under section 128 or a Show Cause Notice under Section 28. Show Cause Notice under section 28 can be issued only to recover duties not levied not paid, short levied, short paid or erroneously refunded and not for any other purpose. The appeal under section 128 has no such restriction.

(b) The re-assessment of the Shipping Bills in this case is without any authority of law.

(c) Classification of goods is a part of assessment and it is the opinion of the exporter or the proper officer.

(d) No exporter has any obligation to anticipate any views of DRI, audit or preventive officers regarding the classification of the

goods or to conform to them. The exporter fulfils his obligation once he files the Shipping Bills classifying goods as per his understanding.

(e) Section 113 (i) does not render any goods liable to confiscation simply because DRI, audit or preventive officers hold a different opinion about the classification.

(f) Penalties under Sections 114 and 114AA also cannot be imposed simply because DRI, audit or preventive officers have a different view of the classification of goods.

(g) In this case, there is no evidence that the MEIS scrips were obtained by collusion, wilful misstatement or suppression of facts or that they were utilised.

34. In view of the above, the impugned order is set aside. The assessee's appeal is allowed and Revenue's appeal is dismissed. The Cross Objection filed by the assessee in Revenue's appeal are also disposed of. The assessee will be entitled to consequential relief, if any.

[Order pronounced on **26/05/2025** ]

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

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

Tejo