

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4**

CUSTOMS APPEAL NO. 130 OF 2008

[Arising out of Order in Original No. 09/GS/CC/DRI/NCH/2007 dated 26.10.2007 passed by the Commissioner of Central Excise (Adjudication), New Delhi]

**COMMISSIONER OF CUSTOMS
(PREVENTIVE)-NEW DELHI**

....APPELLANT

New Customs House, Near IGI Airport,
New Delhi

Vs.

M/S AKAY CONES PVT. LTD.

.....RESPONDENT

67/5328, IInd Floor, Regharpura,
Hardhayan Singh Road, Karol Bagh,
New Delhi-110005

WITH

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M/S INTRADE IMPEX PVT LTD.

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Hardhayan Singh Road, Karol Bagh,
New Delhi-110005

Appearance:

Present for the Appellant : Shri Nagendra Yadav, Authorised
Representative

Present for the Respondent: None

CORAM:

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

FINAL ORDER NO'S. 50877-50878 /2025**DATE OF HEARING : 12/03/2025**
DATE OF DECISION :06/06/2025**P.V. SUBBA RAO**

1. Revenue filed these two appeals to assail the Order in Original dated 26 October 2007 passed by the Commissioner (Adjudication) in which he rejected the transaction values of the goods declared by the respondents, re-determined the values and confirmed the demand of duty with interest and imposed penalties. However, with respect to the seized goods, he confiscated those goods which were available and imposed redemption fine but did not impose redemption fine or confiscated those goods which were seized and handed over to the respondents for safe custody under supardaginama but which were found missing while in the custody of the respondents. The relevant portion of the impugned order is as follows:

“(xxi) I hold 825 rolls measuring 42718 meters of Printed Flock Fabrics having actual assessable value of Rs. 57,54,553/- (EMV Rs.96,11,550/-) seized from the godown premises of M/s Intrade Impex Pvt. Ltd. I M/s Akay Cones Pvt. Ltd. located at A-96, Mayapuri Industrial Area, Phase-II, New Delhi and 1541 rolls measuring 76250 meters of Printed Flock Fabrics (seized from the godown located at Plot No.93, Lakhmi Piayo, Kundli, Haryana) having actual assessable value of Rs. 1,16,61,713/- (EMV Rs.1,69,76,250/-) liable to confiscation under Section 111 (d) of the Customs Act, 1962. As only 683 rolls are available for confiscation, I confiscate the same under Section 111(d) of the Customs Act, 1962. However, I give an option to M/s Intrade Impex Pvt. Ltd. / M/s Akay Cones Pvt. Ltd., New Delhi and Shri H. M. Prabhakar to redeem the said goods on payment of Redemption Fine of Rs. 10,00,000/- and also on payment of appropriate Customs duty as well as interest thereon. As regards remaining 1683 rolls, no order confiscating the same can be passed at this stage because the goods are not available for confiscation. I demand duty leviable thereon on the basis of the above assessable values from them with interest thereon under section 28(1) proviso read with 28AB of the Customs Act, 1962.”

2. The facts which led to the issue of the impugned order are that the Directorate of Revenue Intelligence¹ received intelligence that M/s Akay Cones Pvt Ltd. and M/s Intrade Impex Pvt Ltd., the respondents, owned and controlled by Sh. H.M. Prabhakar were indulging in massive customs duty evasion. According to the information, the respondent had imported fabrics manufactured by M/s Microfibre Inc., M/s Culp Inc. USA and M/s Microfibres Belgium by obtaining invoices for almost 1/3 of the value from traders of Singapore and Thailand. Investigations were conducted, the godowns of the respondents were searched under panchnamas and the statements of Shri H.K. Prabhakar and others were recorded. Investigations revealed that while the cost of the fabrics charged by the manufacture was US\$ 3 to US\$ 3.5 per meter and, the invoices issued by the traders was only US\$ 1 per meter. In short, the investigation showed that the respondents negotiated the price of the goods directly with the manufacturers but obtained invoices for the goods from traders showing only about the third of the actual value.

3. After completing the investigation, the show cause notice dated 01.03.2003 was issued to the respondents and an addendum to it was issued to on 16.06.2004. It was proposed in the show cause notice to reject the transaction value shown by the respondents re-determine the value, demand differential duty, confiscate the seized goods and impose penalties.

4. After the goods was seized during investigation, they were handed over to the respondent under a superdaginama for their

¹ DRI

safe custody. Later, on the direction of the High Court in Writ Petition No. 19959/2005 and CL No. 1294/2005, the goods were jointly inspected by the department and the respondents under the Panchnama dated 24.0.2005. It was found that of the 2366 rolls of fabrics seized from M/s Akay Cones and handed over to them only 683 rolls were available and the remaining rolls went missing while in their custody. In respect of M/s Intrade Impex Pvt Ltd., of the 2366 rolls handed over to the respondent only 683 rolls were found and the remaining rolls were found missing.

5. The short point of dispute in this case is that the Commissioner had confiscated only those rolls of fabrics which were found during the joint inspection and imposed redemption fine in lieu of their confiscation but he did not impose any redemption fine with respect to all the rolls of fabrics which were lost while in the custody of the respondents and were not found during the joint inspection, although they were actually seized and were found missing while in the custody of respondent.

6. The order of the Commissioner was reviewed by the Committee of Chief Commissioners and these two appeals have been filed. It is prayed that the impugned order may be modified and it may be held that the Commissioner should have confiscated the rolls of fabrics which were seized but which went missing from the custody of the respondents and redemption fine should have been imposed.

7. We have heard Shri Nagendra Yadav, learned authorized representative appearing for the department and perused the records.

8. Re-determination of the correct value of the goods, confirmation of demand of the differential duty and confiscation of the goods under section 111 in the impugned order are not disputed. What is in dispute is when the goods were seized handed over the respondent for safe custody and they went missing while in their custody, whether such goods can be confiscated or not.

9. The Commissioner did not confiscate the goods on the ground that they were not available. We find this decision perverse. If the goods are seized they can be confiscated or released. The Commissioner does not dispute that the goods were liable for confiscation. He did not confiscate the goods only to the extent that they were lost while in the custody of the respondents. This is not a case where the goods were not seized at all or where they were not available for seizure. The goods were seized and the Commissioner found that they were liable for confiscation. After the seizure of the goods and before the adjudication proceedings, the goods were handed over to the respondents for safe custody. From their custody the goods went missing. The liability of the goods for confiscation does not get extinguished simply because the respondents had either diverted the goods or pilfered or were negligent to let the goods go missing from their custody.

10. Usually, when the goods are confiscated an option to redeem them is given by imposing a fine under section 125 of the Customs Act which reads as follows:

Section 125 in The Customs Act, 1962

125. Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation. - For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.

11. Sometimes, after the goods are seized, they are provisionally released to the importer with the condition that he would pay any redemption fine which may be imposed in lieu of the confiscation if they are confiscated. Even in this case, the goods were left to the custody of the respondent and it was their

responsibly to ensure that the goods were available till the completion of the adjudication proceedings. If the goods are confiscated, they vest in the Central Government and the officer adjudging the confiscation shall take possession of the confiscated goods as per section 126 of the Act. Had the goods been not diverted or lost through the negligence while in the custody of respondents they would have been confiscated and they would have been vested in the Central Government. In our considered view, since the goods were lost by the respondents, they need to be pay a redemption fine in lieu of the goods.

12. In view of the above, both appeals are allowed and the impugned order is set aside to the extent that the rolls of fabrics seized by the department which went missing while in the custody of the department are held liable for confiscation and the respondent shall be liable for paying redemption fine in lieu of confiscation. The matter is remanded to Commissioner to determine the redemption fine and penalties accordingly. Both appeals are disposed of as above.

[Order pronounced on **06/06/2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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