

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 50071 of 2024

(Arising out of Order-in-Original No. 05/2023/VCG/PR.COMMR/ICD/TKD/Export dated 27.04.2023 passed by the Principal Commissioner of Customs, ICD (Export) Tughlakabad, New Delhi)

**Shanti Swaroop Sharma,
Director**

....Appellant

New Era Trading Pvt. Ltd.,
G-3A, Plot No.5, Time House Community Centre,
Wazirpur Industrial Area,
New Delhi-110052

Versus

**The Principal Commissioner of Customs,
ICD, Tughlakabad, New Delhi-110020**

....Respondent

AND

Customs Appeal No. 55676 of 2023

(Arising out of Order-in-Original No. 05/2023/VCG/PR.COMMR/ICD/TKD/Export dated 27.04.2023 passed by the Principal Commissioner of Customs, ICD (Export) Tughlakabad, New Delhi)

**Sangeeta Tuteja,
Director**

....Appellant

New Era Trading Pvt. Ltd.,
G-3A, Plot No.5, Time House Community Centre,
Wazirpur Industrial Area,
New Delhi-110052

Versus

**The Principal Commissioner of Customs,
ICD, Tughlakabad, New Delhi-110020**

....Respondent

APPEARANCE:

Shri Ashirwad and Shri Virat Sharma, Advocates for the Appellant
Shri Shashi Kant Sharma, Authorised Representative of the Department

CORAM:

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

**DATE OF HEARING: 23.12.2024
DATE OF DECISION: 04.06. 2025**

FINAL ORDER NO's. 50825-50826/2025

JUSTICE DILIP GUPTA

These two Customs Appeal have been filed by Shanti Swaroop Sharma and Sangeet Tuteja, Directors of New Era Trading Pvt. Ltd., an exporter of readymade garments, to assail the order dated 27.04.2023 passed by the Principal Commissioner of Customs, ICD (Exports) Tughlakabad, New Delhi¹, imposing penalties on them under section 114(iii) and section 114AA of the Customs Act, 1962² for the reason that they had connived with Imran Mirza, Proprietor of M/s Concorde Shipping and Logistics India and instead of exporting the goods to countries listed in the Focus Market Scheme, diverted them to Dubai to enable the exporter to avail undue benefits under the said Focus Market Scheme.

2. It transpires that M/s New Era Trading Pvt Ltd was engaged in the export of readymade garments to UAE, Sudan, Senegal, UK, Afghanistan, Armenia, Azerbaijan, Kazakhstan, Ethiopia, Germany and Myanmar and availed the benefit of drawbacks under the Focus Market Scheme. However, intelligence was received that New Era Trading fraudulently availed special Focus Market Scheme benefits by deliberately mis-declaring the consignee country for the purpose of obtaining undue benefit under this scheme. Imran Mirza, Proprietor of Concorde Shipping a freight forwarder after receiving the Let Export Orders manually amended the TR-1 and TR-2 copies of the shipping bills to show the country of destination as Dubai and discharge port as Jebel Ali.

3. Penalties have been imposed upon the two appellants for the following reasons:

“28.5. Imposition of Penalty under Section 114 (iii) & Section 114AA of the Customs Act, 1962 on Shri Shanti

1 the Principal Commissioner

2 the Customs Act

Swaroop Sharma (Noticee No. 2) and Ms. Sangeeta Tuteja (Noticee No. 3):-

(i) As far as the imposition of penalty under Section 114(iii) of the Customs Act, 1962 on Shri Shanti Swaroop Sharma (Noticee No. 2) as proposed in the impugned Show Cause Notice, is concerned, I find that Shri Shanti Swaroop Sharma Directors of M/s New Era Trading Private Limited, in connivance with Shri Imran Mirza, proprietor of M/s Concorde Shipping & Logistics India duly abetted and had indulged in the act of mis-declaring the destination of export of goods to the countries listed in Focus Market Scheme but same were diverted to Dubai with a view to avail undue benefits under FMS.

(ii) Further, as regards imposition of penalty under Section 114AA of the Customs Act is concerned, I find that Sh Shanti Swaroop Sharma, knowingly prepared and gave false or incorrect information regarding destination of country of export goods to Customs. Shri Shanti Swaroop Sharma gave direction to the freight forwarder to file TR-1 & TR-2 Shipping Bills, arrange fake/bogus landing certificates and House BLs and submitted the same to DGFT, as proof of the delivery of the goods to the consignees in the Focus Market notified countries. All the above facts had been admitted by Shri Shanti Swaroop Sharma in his statement dated 27.10.2017 recorded under Section 108 of the Customs Act, 1962 during the investigation and he was found to be the main mastermind and one of the beneficiaries in this scheme to systematically defraud the Exchequer.

In view of the above, I find that Shri Shanti Swaroop Sharma (Noticee No. 2) is liable to penalty under Section 114(iii) and 114AA of the Customs Act, 1962.

(iii) As far as imposition of penalty on Ms. Sangeeta Tuteja is concerned, I find that Ms. Sangeeta Tuteja, Director of "New Era" has indulged in the act of mis declaring the destination of export of goods to the country listed in focus market but same were diverted to Dubai with a view to avail undue benefits under FMS. Hence, she is liable to penalty under Section 114(iii) of the Customs Act, 1962.

(iv) Further, from the evidence brought out on records and in as discussed at para 23.3 supra, it is established that Ms. Sangeeta Tuteja knowingly signed export documents and gave false or incorrect information regarding destination of country of export goods to Customs. The facts were known to Ms. Sangeeta Tuteja that these goods were not being exported to the countries declared on the export

documents and same were diverted to Dubai, a non-Focus Market country and yet she knowingly signed export documents. During investigation, submission made by Ms. Sangeeta Tuteja that she was non-working director is false and is only an attempt to escape her liability from involvement in the fraud caused to the exchequer.

Thus, I find that Ms. Sangeeta Tuteja (Noticee No.3) is also liable to penalty under Section 114AA of the Customs Act, 1962."

(emphasis supplied)

4. Shri Ashirwad, learned counsel for the appellant assisted by Shri Virat Sharma submitted that the Principal Commissioner committed an illegality in imposing penalties upon Shanti Swaroop Sharma and Sangeeta Tuteja under sections 114(iii) and 114AA of the Customs Act. Elaborating this submission, learned counsel submitted that the finding recorded by the Principal Commissioner that the two appellants, as Directors of New Era Trading Pvt. Ltd., in connivance with Imran Mirza abetted and indulged in the act of mis-declaring the destination of the goods exported so as to enable the exporter to avail undue benefits under the Focus Market Scheme is based on statements which were not recorded by the Adjudicating Authority in accordance with the procedure prescribed under section 138B of the Customs Act. Learned counsel also pointed out that in any view of the matter, the confiscation of the goods has been set aside by order of date in Customs Appeal No. 55675 of 2023 filed by New Era Trading Pvt Ltd and, therefore, penalty under section 114(iii) of the Customs Act could not have been imposed either upon Shanti Swaroop Sharma or Sangeeta Tuteja. Learned counsel also pointed out that penalty under section 114AA of the Customs Act could not have been imposed upon Shanti Swaroop Sharma and Sangeeta

Tuteja as they had neither any knowledge or intention of causing undue benefit to exporter.

5. Shri Shashi Kant Sharma, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in the appeals.

6. Section 114(iii) of the Customs Act provides that 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 of the Customs Act shall be liable to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under the Customs Act, whichever is greater. The Principal Commissioner confiscated the goods under section 113 of the Customs Act.

7. As noticed above, the confiscation of goods has been set aside by order of date in Customs Appeal No. 55675 of 2023 filed by New Era Trading Pvt. Ltd. Penalty under section 114(iii) of the Customs Act could not, therefore, have been imposed upon the Shanti Swaroop Sharma and Sangeeta Tuteja.

8. Section 114AA provides that if a person knowingly or intentionally makes signs or uses or causes to be made, any material particular, in the transaction of any business for the purposes of the Customs Act, shall be liable to a penalty not exceeding five times the value of goods.

9. This finding has been recorded on the basis of statement made by Shanti Swaroop Sharma under section 108 of the Customs Act.

10. The issue that arises for consideration is whether the statement recorded under section 108 of the Customs Act could be considered as evidence under section 138B of the Customs Act.

11. In this connection, reference can be made to the decision of the Tribunal in **M/s Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur**³. The Tribunal examined the provisions of sections 108 and 138B of the Customs Act as also the provisions of sections 14 and 9D of the Central Excise Act, 1944 and observed as follows:

"21. It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the

3. **Excise Appeal No. 51148 of 2020 decided on 01.04.2025**

statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain.”

12. After examining various judgments of the High Court and the Tribunal, the Tribunal observed as follows:

“28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded

before the adjudicating authority, after which such statements can be admitted in evidence.”

13. In this view of the matter, the statement of Shanti Swaroop Sharma made under section 108 of the Customs Act would not be relevant.

14. This apart the finding that Shanti Swaroop Sharma and Sangeeta Tuteja knowingly prepared and gave false or indirect information regarding the country of export destination is not based of any evidence but is based on mere statements recorded under section 108 of the Customs Act. These statements cannot be relied upon.

15. In this view of the matter, the penalty imposed upon Shanti Swaroop Sharma and Sangeeta Tuteja under section 114AA of the Customs Act cannot also be sustained.

16. In view of the aforesaid discussion, the impugned order dated 27.04.2023 passed by the Principal Commissioner deserves to set aside and is set aside. These two appeals are, accordingly, allowed.

(Order dictated in the Open Court on 04.06.2025)

(JUSTICE DILIP GUPTA)
PRESIDENT

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