

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

CUSTOMS APPEAL NO. 51251 OF 2022

[Arising out of Order in Appeal No. CC(A) CUS/D-II/ICD (TKD) Import/3059/2018 dated 07.12.2018 passed by the Commissioner of Customs (Appeals) New Customs House, New Delhi]

S B INTERNATIONAL

.....APPELLANT

Proprietor of M/s Premji Bhanushali,
Khasra No. 38/6,
Shiv Vihar, Shahbad, Daultapur,
Delhi 110042

VERSUS

**COMMISSIONER, CUSTOMS-NEW DELHI(ICDRESPONDENT
TKD)**

New Customs house
Near IGI Airport,
New Delhi-110037

Appearance:

Present for the Appellant : Ms. Jyoti Sharma, Advocate
Present for the Respondent: Shri Girijesh Kumar, Authorised Representative

CORAM:

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50096 /2025

**Date of Hearing : 20/01/2025
Date of Decision : 28/01/2025**

BINU TAMTA:

1. The present appeal has been filed challenging the order in appeal no. CC(A) CUS/D-II/ICD (TKD) Import/3059/2018 dated 07.12.2018 passed by the Commissioner of Customs (Appeals), whereby the Commissioner (Appeals) confirmed the differential

duty, confiscation and imposition of redemption fine and penalty under the provisions of the Customs Act, 1962¹.

2. On the basis of intelligence gathered by SIIB officer of ICD(Import) TKD, New Delhi that the goods imported by M/s SB International under the Bill of Entry² No. 4877899 dated 12.04.2016 and 4877899 dated 12.04.2016 were mis-declared. Container No. 2153470 and 2158234 were examined and the goods were found to be "zinc ingots" bearing the mark "calcimin zinc" contrary to the declaration that the goods were "lead ingots". The goods imported under the two BEs were seized under section 110 of the Act due to mis-declaration as "zinc ingots" instead of "lead ingots". During the course of the investigation, statement of Shri Premji Bhanusali, Proprietor of M/s S.B. International was recorded on 06.05.2016 under section 108 of the Act, wherein he stated that the order was for import of lead ingots only. However, due to mistake of the foreign supplier, zinc ingots were found in the consignments. He also brought to the knowledge of the department, letter dated 03.05.2016 received from M/s Metalia International Trading FZE, UAE, wherein the supplier admitted his mistake and he, therefore, requested for taking a lenient view as he was incurring demurrage and detention charges, and on that account had submitted that he is ready to pay the fine and penalty.

1 The Act
2 BE

3. On adjudication, Joint Commissioner of Customs, ICD TKD vide order dated 30.05.2016 re-determined the declared value of Rs. 63,30,882/- in respect of BE No. 4861044 as Rs. 65,53,290/- and the declared value of Rs. 32,59,224/- in respect of BE No. 4877899 as Rs. 34,89,904/- and, accordingly, confirmed the demand of differential duty of Rs. 64,040/- under section 128 (i) of the Act and held that the goods are liable to confiscation with redemption fine of Rs. 5,00,000/- and penalty under section 112 (a) of the Act. The appeal filed by the appellant has been rejected by the impugned order, hence the present appeal before this Tribunal.

4. We have heard Shri Jyoti Sharma, learned counsel for the appellant and Shri Girijesh Kumar, learned authorized representative appearing for the department and perused the records.

5. The learned Counsel for the appellant relying on the letter dated 3.05.2016 received from the foreign supplier admitting that mis-declaration was on their part, submitted that there was no mistake on the part of the appellant and therefore confiscation of the goods and imposition of such heavy redemption fine is patently wrong and unsustainable. She also challenged the imposition of penalty under section 112 as mis-declaration of goods was neither intentional nor was on account of the appellant who has filed the BE on the basis of import documents provided by the foreign supplier. She also referred that the goods were

found to have pasted slips, showing "zinc", which clearly implied that the appellant had no intention to mis-declare the description of the goods.

6. The learned authorized representative contested the appeal, basically referring to the statement of Shri Premji Bhanusali where he admitted that the goods were declared as "lead ingots" instead of "zinc ingots" and thereby there was violation of section 46 (4) of the Act. According to him, since the appellant admitted the mistake and expressed readiness to pay the fine and penalty, the same indicates acknowledgement of violation of the provisions of the Customs Act. He also submitted that despite the absence of intent to evade customs duty, the declaration constituted a breach of regulations.

7. Since the learned authorized representative has placed much reliance on the admission of Shri Premji Bhanushali recorded under section 108 of the Act, we may first consider the same. No doubt, the proprietor had admitted that the goods declared were "lead ingots", whereas the goods imported were actually "zinc ingots", however, he claimed it as a mistake and for which he was sorry. He requested the department to take a lenient view to release the goods on payment of fine and penalty since he was incurring heavy demurrage charges and there was no evasion of customs duty. He actually stated that it was a bonafide mistake and therefore he was ready to pay fine and penalty. During the course of his statement, he produced a letter

dated 3.05.2016 received from the foreign supplier, M/s Metalia International Trading FZE, U.A.E. wherein it was acknowledged that they shipped "zinc ingots" instead of "lead ingots" and raised invoice of "lead ingots" due to mistake of their trainee staff. Further, in support of his statement, he produced the written contracts of the previous consignments imported by him. Thus, what we find is, that the 'admission' by the proprietor as interpreted by the revenue is not correct. The proprietor of the appellant had pleaded that it was a case of a bonafide mistake on the part of the foreign supplier and there was no evasion of duty. In view thereof he requested for release of the goods on payment of fine and penalty so as to avoid the further liability of heavy demurrage charges. The admission is not of any guilt on the part of the importer. It is not a case of malafide intention to evade duty or import goods which are prohibited as both "lead ingots" and "zinc ingots" were freely importable items. Moreover, there was not much difference in the price of the two products rather as per the supplier, the lead ingots were more expensive than zinc ingots and even the rate of duty of the two items is also the same and hence the appellant would not have really gained any monetary benefit by resorting to mis-declaration. At the most the appellant can be said to have made an incorrect declaration which can be termed as a bonafide mistake on the part of the foreign supplier for which neither confiscation can be directed nor penalty can be imposed.

8. In fact the adjudicating authority had categorically recorded the finding that there was no intent to evade customs duty behind the mis-declaration and the reason behind the same was that though the goods were found to be mis-declared as "lead ingots", whereas actually the imported goods were "zinc ingots", however, it has been ascertained that the "lead ingots" are expensive than the "zinc ingots" and so the importer had to pay more customs duty than the duty payable for "zinc ingots". Surprisingly, the adjudicating authority having accepted the contention of the importer that it was a *bonafide* mistake of the supplier that they have dispatched the goods by mistake, since the importer does not appear to gain much by way of mis-declaration of the description since rate of duty on the two items is also same, ordered for confiscation with redemption fine and penalty. In view of the peculiar facts of the present case, neither confiscation nor imposition of redemption fine and penalty is justifiable and therefore the same needs to be set aside.

9. In this regard, the learned Counsel for the appellant has referred to the decision in **Suzuki Powertrain India Ltd vs. Commissioner of Customs (Exports), New Delhi**³ where the Tribunal held that in case of *bonafide* mistake by foreign supplier, neither confiscation can be directed nor penalty can be imposed. Similarly, in the case of **Sorento Granito Pvt. Ltd vs. Commissioner of Customs, Visakhapatnam**⁴ where also the

³ 2009(239) ELT 266 (Tri. Del)

⁴ 2009(245) ELT 657(Tri. Bang)

overseas supplier had inadvertently shipped the consignment of single feeder along with the consignment of hydraulic press to Visakhapatnam Port, instead of Mundra Port and the Tribunal held that there is absolutely no *malafide* intention and therefore set aside the confiscation, redemption fine and also the penalty imposed. In **Handtex vs. Commissioner Customs, Raigarh**⁵ with reference to mis-declaration in the valuation of the goods, it was observed that:

“7..... Every change made by the assessing officer during the course of assessment whether relating to rate of duty or value need not lead to an inference of mis-declaration by the importer. If a person receives a consignment as a gift, the transaction value is nil but the same requires to be valued for the purpose of levying Customs Duty. Fixation of value or enhancement of value for assessment purpose cannot in every case lead to an inference of mis-declaration of value in the absence of any evidence to that effect. Therefore, we are unable to accept the charge of mis-declaration and consequent confiscation and imposition of penalty.”

10. The redemption fine of ₹5 lakhs imposed by the adjudicating authority is absolutely unsustainable not only on the ground that it is highly exorbitant with reference to the differential duty determined but also on account of our findings that order of confiscation itself is not maintainable. We, therefore set aside the redemption fine imposed on the appellant.

11. Since it is not a case of mis-declaration, but only a mistake of making an incorrect declaration and that too by the foreign supplier, the appellant cannot be saddled with the liability of

penalty under the provisions of the Customs Act. Hence the penalty imposed under Section 112(a) of the Act is hereby set aside.

12. We therefore do not find any merit in the impugned order and the same deserves to be set aside. The appeal is, accordingly allowed.

[Order pronounced on **28.01.2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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