

2026 (7) TMI 668 - CESTAT AHMEDABAD**Shri Altaf Ahmed Versus Commissioner of Customs, Kandla**

No.- Customs Appeal No. 11552 of 2025 - DB

Dated:- July 9, 2026

Order No. Final Order No. 10404/2026

Natural justice and proof requirements bar Customs penalties absent notice, hearing, and credible evidence of active involvement.

Penalty under the Customs Act cannot be sustained where no show cause notice was served on the appellant and no proper opportunity of hearing was afforded; the adverse order was therefore set aside for breach of natural justice. Penalties under Sections 112(a), 112(b) and 114AA were also held unsustainable because the department produced no credible evidence of the appellant's active role, knowledge, or linkage to the alleged diversion of goods, and did not establish the specific ingredients of the penal provisions. The impugned penalty order was set aside in entirety to the extent challenged, and the appeal succeeded.

Issues: (i) whether the penalty order was sustainable when no show cause notice was served on the appellant and no proper opportunity of hearing was afforded; (ii) whether penalties under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962 were maintainable in the absence of credible evidence showing the appellant's active role or knowledge in the alleged diversion of goods.

Issue (i): Whether the penalty order was sustainable when no show cause notice was served on the appellant and no proper opportunity of hearing was afforded.

Analysis: The record showed that the appellant was not served with the show cause notice and was not even named as a noticee. The Customs framework did not provide for service of notice through portal upload in the manner suggested by the department. An adverse order passed without issuance of notice and without affording a proper hearing could not stand.

Conclusion: The penalty order was unsustainable for breach of natural justice and want of notice, and the finding is in favour of the assessee.

Issue (ii): Whether penalties under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962 were maintainable in the absence of credible evidence showing the appellant's active role or knowledge in the alleged diversion of goods.

Analysis: The department failed to produce transport documents, invoices, bank records, delivery instructions or correspondence linking the appellant to the alleged diversion. The material relied upon did not attribute any active role to him, and no facts were established to satisfy the ingredients of Sections 112(a), 112(b) or 114AA. In the absence of proof of a specific act or omission, possession, handling, or a false declaration or document, the penalty could not be sustained.

Conclusion: The penalties under Sections 112(a), 112(b) and 114AA were not maintainable, and the finding is in favour of the assessee.

Final Conclusion: The impugned penalty order was set aside in entirety to the extent challenged, and the appeal succeeded.

Ratio Decidendi: Penalty under the Customs Act cannot be sustained unless the noticee is served with notice and the department establishes, by credible evidence, the specific ingredients of the penal provisions, including the person's active participation or knowledge where required.

Judgment / Order

Hon'ble Dr. Ajaya Krishna Vishvesha, Member (Judicial) And Hon'ble Mr. Satendra Vikram Singh, Member (Technical)

For the Appellant : Shri Abhishek Malvi, Advocate

For the Respondent : Shri Aakash Singh, Superintendent (AR)

ORDER

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against Order-in-Original dated 15.04.2025 passed by learned Commissioner through which he imposed penalty of Rs.25,00,000/- under Section 112(a) Rs.25,00,000/- under Section 112(b) and Rs.50, 00,000/- under Section 114AA on the appellant.

2. The facts of the case are that investigation was conducted by the Directorate of Revenue Intelligence (DRI) regarding alleged diversion of imported Areca Nuts warehoused in KASEZ by M/s. Global Enterprises. The department was of the view that M/s. Global Enterprises had imported Areca Nuts in SEZ without payment of duty, with intention to divert the same into DTA, in the guise of SEZ to warehouse transfer, despite the fact that said goods were rejected by FSSAI and that the space availability certificate issued by CWC warehouse was invalid, having expired before clearance from SEZ.

2.1 The appellant was held liable to penalty by the Adjudicating Authority, who observed in the impugned order that Shri Altaf Ahmed was to get commission of Rs. 10per kg. for delivery of subject consignment of Areca Nuts to M/s. J B Traders in Nagpur. He was an active partner of Shri D. Suresh in this fraudulent diversion of Areca Nuts imported duty free in KASEZ into DTA. Thus, by such acts of commission and omission, Shri Altaf of M/s. Future Logs India Pvt. Limited, Chennai has rendered himself liable for penalty under Sections 112(a) and Section 112(b) of the Customs Act, 1962. He has also made M/s. Global Enterprises to sign incorrect declaration of transfer to CWC, Okhla, submission of expired space certificate of CWC, generation of incorrect E-Way bills for movement of goods. For such act of omission, Shri Altaf Ahmed is also liable for penalty under Section 114AA of Customs Act, 1962. Accordingly, learned Commissioner imposed penalty on appellant as mentioned above. Feeling aggrieved from the impugned Order-in-Original dated 15.04.2025, the present appeal has been filed by the appellant.

3. Learned Counsel for the appellant submitted that no goods were recovered from the possession of the appellant and no incriminating documents were seized from him. No statement under Section 108 of the Customs Act, establishing his involvement, has been relied upon. There is no evidence showing that the appellant handled, transported, financed, stored, purchased, sold, possessed or dealt with the impugned goods. He prays that the impugned Order-in-Original may be set-aside to the extent of imposing penalty of Rs. One Crore on the appellant.

4. Learned AR fairly admitted during arguments that no Show Cause Notice was ever served upon the appellant nor even marked to him. However, he submitted that matter may be remanded to the Commissioner for re-adjudication. He has relied upon the law laid down in **Tvl. Balaji Traders vs. The**

Deputy Commercial Tax Officer, Chidambaram-1, Cuddalore, Tamil Nadu reported at **2025 (2) TMI 1171 (MADRAS HIGH COURT)** in which Hon'ble Madras High Court set-aside the impugned order for violation of principles of natural justice for not serving the Show Cause Notice upon the appellant effectively and remanded it for fresh reconsideration.

5. Learned Counsel for the appellant vehemently opposed the averment of the learned AR and submitted that the department cannot take any benefit of the judgment referred to by learned AR because in that case, the issue involved was pertaining to compliance of the provisions of Section 169 of the GST Act in which there is a system of uploading the Show Cause Notice on the GST portal under the column, "View Notices/Orders" whereas no such system has been adopted under Customs Act.

6. We have heard the learned Counsel for the appellant and learned AR for the department and perused the record.

6.1 From perusal of record, it emerges that neither copy of Show Cause Notice was directed to be issued to the appellant Shri Altaf Ahmed nor his name has been mentioned as a noticee in the Show Cause Notice. We agree with the learned Counsel for the appellant that under Customs Act, there was no provision of uploading the Show Cause Notice on the portal of the department at the relevant time. Therefore, impugned order imposing penalty of Rs. One Crore upon the appellant Shri Altaf Ahmed has been passed against the provisions of Customs Act, without affording proper opportunity of hearing to the appellant and without issuing Show Cause Notice.

6.2 We are also of the view that department has failed to produce any credible documentary evidence linking the appellant with the alleged diversion of goods. No transport documents, invoices, bank transactions, delivery instructions or correspondence have been produced by the department to prove that the appellant has played any role in the alleged diversion of goods. None of the truck drivers, warehouse operators, importers or Custom Brokers have stated that the appellant instructed them or participated in any way in the alleged diversion. Therefore, without any credible and cogent evidence, no penalty could have been imposed against the appellant.

6.3 It is also pertinent to note here that the department has solely relied upon the statements recorded under Section 108 of the Customs Act but none of the statements relied upon by the department attribute any active role to the appellant. The department has also failed to establish mens rea on the part of the appellant therefore, the impugned order imposing penalty upon the appellant is bad in law and is not sustainable.

6.4 Section 112(a) of the Customs Act can be attracted when it is proved that any person rendered the goods liable to confiscation by an act or omission. However, in the impugned order no specific act or omission has been assigned to the appellant and it has not been clarified that when, where and how the appellant participated in the alleged diversion of goods. Therefore, no penalty under Section 112(a) can be imposed upon the appellant.

6.5 Section 112(b) of the Customs Act is attracted when a person knowingly acquired possession, transported, removed, deposited, harboured, kept, concealed, sold or purchased goods liable to confiscation. However, no evidence has been placed on record that appellant ever possessed, handled or dealt with the subject goods. No goods were recovered from the appellant nor were any goods transported at his instruction. Therefore, no penalty under Section 112(b) can be imposed upon the appellant.

6.6 Similarly, Section 114AA of the Customs Act is attracted when a person knowingly uses, signs or causes to be made a false or incorrect declaration, statement or document. In the impugned Order-in-Original it has not been clarified as to which declaration made by the appellant was false or which false document was prepared and signed or used by the appellant making him liable for penalty. There is no allegation that the appellant filed any Bill of Entry, invoice, declaration, transport document or Customs document. In the absence of any of such evidence, penalty under Section 114AA could not have been imposed upon the appellant.

6.7 From the record, it appears that the sole basis for implicating the appellant is that he had associated himself with M/s. Future Logs India Pvt. Limited. Merely because the appellant was a Director of the above mentioned Company, penalty cannot be imposed unless ingredients of Section 112(a), 112(b) and 114AA of the Customs Act are present. The Director can only be held personally liable and ordered to pay penalty only when it is established that appellant played an active role in the alleged offence but no such role has been assigned to the appellant in the present case

7. In view of the above observations, we are of the view that the impugned order is not sustainable and is liable to be set-aside to the extent of imposing penalty of Rs. One Crore on the appellant and the appeal deserves to be allowed.

8. Consequently, the appeal is allowed and the impugned Order-in-Original dated 15.04.2025, to the extent of imposing penalty of Rs. One Crore on the appellant, is set-aside.

(Pronounced in the open court on 09.07.2026)

Citations:

1. **2025 (2) TMI 1171 - MADRAS HIGH COURT**
Tvl. Sri Balaji Traders rep. by its Proprietor N. Govindarajalu Versus The Deputy Commercial Tax Officer Chidambaram-I Cuddalore, Tamil Nadu