(2025) 01 CESTAT CK 1581

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No.53817 of 2018

M/s Spectro Lab Equipments Pvt. Ltd. @APPELLANT @Hash
Commissioner of Customs @RESPONDENT

Date of Decision : 29-01-2025

Acts Referred:
Customs Act, 1962 — Section 28AA, 28(4), 28(5), 108, 114A, 114AA, 127B, 127(C)

Citation : (2025) 01 CESTAT CK 1581

Hon'ble Judges : Dilip Gupta, President (J);P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Reena Khair, Shubham Jaiswal, Rakesh Kumar

Final Decision : Allowed

Judgement

Dilip Gupta, J

1. M/s Spectro Lab Equipments Private Limited, the appellant has filed this appeal for setting aside the order dated 29.08.2018 passed by the Commissioner confirming the demand of duty under section 28 (4) of the Customs Act, 1962, the Customs Act with interest under section 28AA of the Customs Act and penalty under sections 114A and 114AA of the Customs Act. The prayer in this appeal is that the penalty imposed upon the appellant should be set aside and the deposit made by the appellant should be appropriated towards the duty demand that has been confirmed.

2. The factual position, as stated by the appellant, is as follows:

(i) The appellant is engaged in the import and trading of lab equipments. It appointed Raj Kumar Pal of M/s Complete Forwarders and M/s Complete Logistics as its Clearing and Forwarding Agent for undertaking complete logistics, including customs clearance. The appellant used to pay all charges, including customs duty, to Raj Kumar Pal by banking channels;

(ii) Raj Kumar Pal arranged the delivery of goods and provided copies of the customs assessed Bills of Entry and the bank attested challans reflecting payment of customs duty;

(iii) During a search at the office of the appellant on 04.11.2015 by SIIB, the appellant provided the Bills of Entry and TR6 challans given to the appellant by Raj Kumar Pal;

(iv) Statement of Sushant Gupta, Director of the appellant company was also recorded. He stated that M/s Complete Forwarders Pvt. Ltd. and M/s Complete Logistics undertook all clearance related work till April 2014, after which payment was made directly to Customs through online facility;

(v) Raj Kumar Pal explained that the modus operandi followed by him was to create forged documents and these documents were provided to the appellant. The duty of customs was paid on import invoices fabricated by him to reflect a lower value. He also admitted that this fraud was committed by him, for his own benefit; and

(vi) On being informed that Raj Kumar Pal had not deposited the customs duty, the appellant made a voluntary deposit of an amount of Rs. 50 lacs through a demand draft dated November 06, 2015 and a further amount of Rs. 25 lacs by a demand draft dated 25.02.2016. The appellant made these deposits, as it believed that it was under an obligation to pay the correct duty to the custom department.

3. A show cause notice dated 18.01.2016 was issued to the appellant and Raj Kumar Pal seeking to recover the differential duty of customs amounting to Rs. 1,19,54,241/- in respect of 81 Bills of Entry under section 28(4) of the Customs Act by invoking the extended period of limitation with interest under section 28AA and penalties under sections 114A and 114AA of the Customs Act.

4. On receipt of the show cause notice, the appellant filed a complaint against Raj Kumar Pal at Police Station at Dwarka for lodging a First Information Report as Raj Kumar Pal had not only fraudulently charged excess duty of Customs amounting to Rs. 1,19,54,241/- from the appellant on the basis of forged Bills of Entry and TR-6 challans, but had also caused damage to the reputation of the appellant before customs and had also made the appellant liable to penalties.

5. The appellant also filed an application for Settlement under section 127B of the Customs Act. Before the Settlement Commission, Raj Kumar Pal stated that he was a poor person and, therefore, no penalty should be imposed on him. Raj Kumar Pal was called upon to provide details of his bank account and bank statement for the relevant period, but Raj Kumar Pal failed to provide either the bank details or the bank statement. The appellant provided bank statement as well complete reconciliation of the imports and the payments made to Raj Kumar Pal towards duty of customs. By a final order dated 28.04.2017, the application for Settlement was dismissed on the ground of failure on the part of the appellant to lodge a First Information Report against Raj Kumar Pal, or institute a civil suit against Raj Kumar Pal and this shows that the appellant had not come to the Settlement Commission with clean hands and had also not made a true and complete disclosure. The relevant portion of the order passed by the

Settlement Commission, as has been reproduced in paragraph 5.2.7 of the impugned order dated 29.08.2018 passed by the Commissioner, is reproduced below:

"30. Shri Sushant Gupta, Director, of both the applicants in his statement dated 4.11.2015 informed that Shri Raj Kumar Pal owner of M/s Complete forwarders Pvt. Ltd and M/s Complete Logistics was handling their entire work of Custom clearance of M/s Spectro Analytical Lab Ltd up to September 2013 and of M/s Spectro Lab Equipment Pvt Ltd up to April 2014. Enquiries conducted in respect of M/s Complete forwarders Pvt Ltd and M/s Complete Logistics revealed that the firms were not found existing on the given address. Shri Raj Kumar Pal was not found at given address, but surprisingly he appeared before Custom officers when contacted on mobile no 9811684222 provided by Shri Sushant Gupta in November 2015. Before this date, as per the SCN, Shri Raj Kumar Pal had already defrauded M/s Spectro Lab Equipment Pvt. Ltd for an amount of Rs 1,19,54,241/-, The appearance of Shri Raj Kumar Pal before the Customs officers after he had defrauded M/s Spectro Lab Equipment Pvt Ltd for, an amount of Rs 1,19,54,241/-, in response to a phone call is surprising. More surprising is the fact that both the applicants did not lodge an F.I.R, but filed only a complaint with the Police as late as on 11.02.16, i.e, four months after they had come to know of the fraud by Shri Raj Kumar Pal. As per the report of the Department dated 19/20.12.16:

"It was found that the complaint has been entered in the diary register at S No 10/CH- P/SHO/OIA dated 11.2.16 and no formal FIR has been lodged in this regard and that investigation is pending. This shows that this fact is merely an eye-wash by the importer to prove their innocence and shift their connivance solely upon the CHA. This also shows that the importer is acting softly on the CHA and have not made him accused since they have not lodged formal FIR which could have translated into proper Police investigation".

31. Both the applicants have also not filed any civil suit for recovery of Rs. 1,49,66, 130/- , the amount they claim to have been defrauded of, Logical action to follow in case of genuine loss would have been an attempt to recover the lost sum.

32. Another interesting aspect of the case is that Shri Raj Kumar Pal is not authorized under Custom House Agents Licensing Regulations, 2004, amended by Customs Brokers Licensing Regulation- 2013 for handling any work relating to Custom clearances, yet it is claimed that he was assigned the Custom clearance work by both the applicants without any written agreement.

33. Further as declared by the Advocate of Shri Raj Kumar Pal during the hearing on 29.03.17 that Shri Raj Kumar is hand to mouth. This also is surprising as a person who has defrauded M/s Spectro Lab Equipment Pvt Ltd for an amount of Rs 1,19,54,241/- can under normal circumstances not be hand to mouth unless, he is not the beneficiary of the scam.

These circumstances raise strong suspicion that evasion of duty was masterminded by both the applicants themselves and they had introduced Shri Raj Kumar Pal into their scheme of evasion of Custom duty as a pre-emptive safety valve to claim innocence and ignorance and avoid taking the blame on themselves when the scam was unearthed.

34. To verify these suspicions, it was decided to verify the claim of Shri Sushant Gupta, Director, of Applicant No 1 & 2 who in his statement dated 4.11.15 has categorically mentioned that:

"........I further state that upon delivery of the import consignment Shri Raj Kumar was raising bills upon us which includes Custom duty paid for the consignment, handling charges, his own service charges and also any other amount payable to Airlines or Custodian. I state that the payment for each bill raised by Shri Raj Kumar was made by us through cheque"

Accordingly, the co-applicant was asked to submit his Bank statement. The same was not submitted and the Advocate of the co-applicant during the hearing held on 29.3.17 stated that he has not been able to procure the bank statement though Shri Raj Kumar Pal visited the bank a number of times and their bank has not provided the statement to him saying that the account has been closed in the year 2014. It was also Informed by Shri Arora, Advocate that he does not know the Bank Account number of Shri Raj Kumar Pal.

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37. This leads us to conclude that M/s Spectro Lab Equipment Pvt Ltd deliberately and in a very systematic and planned manner arranged to submit doctored and forged documents to evade Custom duties. The role of the co-applicant Shri Raj Kumar Pal as it emerges from the foregoing is that of a dummy erected to take the blame in a situation like the present one when the modus operandi of evasion of duty by Applicants' is detected and act as a buffer. In this view of the things, Shri Raj Kumar Pal does not appear to have actually masterminded the evasion of Custom duty.

38. From the above it is clear that, the applicants though have made a true and full disclosure of their duty liability, yet they have not come clean and truthfully disclosed the manner in which this duty liability arose and their factual role in evasion of Custom Duties. In the Settlement application the applicant have claimed to be a victim of fraud by Shri Raj Kumar Pal but what actually has emerged as detailed above, is that the applicants were themselves the; perpetrators of the fraud on the Government. Thus the disclosure by the applicants is not true. That being so, the Applicants do not satisfy the precondition of fulfilling the statutory requirement as enshrined in Sub Section (1) of Section 127(B) of the Customs Act, 1962 which reads as:

"(1) Any importer, exporter or any other person (hereinafter referred to as the applicant in this Chapter) may, in respect of a case, relating to him make an application, before adjudication to the Settlement Commission to have the case settled, in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred”

39. Accordingly, we reject the application nos 5225/2016, 5260/2016, 5224/2016 and 5261/2016 following the provisions of Sub Section (8) of Section 127(C).”

(emphasis supplied)

6. Thereafter, the appellant filed a reply dated 23.01.2018 to the show cause notice pointing out that fraud had been committed by Raj Kumar Pal without the knowledge or connivance of the appellant. Details of the payment made by the appellant to Raj Kumar Pal, as certified by the Chartered Accountant, were also provided.

7. The Commissioner, however, confirmed the demand with interest and penalties. The relevant portions of the order passed by the Commissioner are reproduced below:

“5.4 I find that the noticee no. 1 (Importer) to the SCN had no where contested the issue of forged value of the goods and duty liability (as detailed in Annexure A to the SCN). On the contrary Shri Sushant Gupta, Director of the importer firm, in his statement 23.12.2015 admitted the fact even if the forgery was committed by Shri Raj Kumar Pal, they will discharge their duty liability along with interest. This fact was also accepted by them in the submission made in the Settlement Commission while filing application for settlement of the case. I find that the importer have admitted and discharge their duty liability. They vide their reply dated 16.04.2018 also claimed to have paid some amount towards their interest liability. The details of amount claim to have paid by the importer is refurnished below:-

S. No.

Challan No. & date

Amount (in Rs.)

Remarks

1.

731897 dated 06.11.2015

50,00,000/-

Deposited during investigation (as mentioned in the SCN)

2.

737709 dated 01.01.2016

25,00,000/-

Deposited during investigation (as mentioned in the SCN)

3.

739866 dated 16.02.2016

44,54,241/-

Deposited after issuance of SCN

4.

742147 dated 04.04.2016

43,20,421/-

Deposited after issuance of SCN (interest portion)

I find that even in para 15 of their reply dated 16.04.2018, Noticee No. 1 has very clearly admitted that they are not disputing the duty and interest in the instant case

Thus, I find that the noticees has admitted their duty liability.

5.4.1 In view of the above, I find that the issue of duty liability is resolved and the noticees admitted the fact and discharged the same. Now, the issue arises is the penalty imposed in the SCN to the importer firm and noitcee no. 2 Shri Raj Kumar Pal. I find that all the noticees have filed applications before the Hon'ble Settlement Commission for immunity from prosecution and Penalties proposed in the SCN. I find that the Settlement Commission vide their Final Order No. F-3142-3145/CUS/2017-SC(PB)(R) dated 28.04.2017 rejected the applications filed by the noticees to above said SCN on the ground that applicants (i.e. Noticee No. 1 to the SCN) did not disclose the manner in which the duty liability arose and their factual role in evasion of Customs Duty.

5.4.2 I find that Shri Raj Kumar Pal in statement dated 06.11.2015 admitted that owing to his poor financial condition and in order to establish himself he planned to mis-declare the import value of the goods imported by the noticees importer firm by way of changing the actual invoice by the forged invoice generated by him in his office. Shri Raj Kumar Pal further stated that he also forged the Bills of Entry along with Bank Challans for depositing in Bank and for providing to importers; that he charged the full amount of actual duties along with other service charges from the importer, but, deposited the duty on the basis of forged invoices of lesser value; that he committed this fraud for the period from January 2011 to March 2014 and the duty amount to customs was paid from the account of firms of Shri Raj Kumar Pal after receiving the same from importers; that he admitted that during the period from January 2011 to March 2014, a total no. of

81 cases (as detailed in SCN) were found (Upto March 2014) where the lesser amount of duty was paid by way of forging of invoices, Bills of Entry and Bank Challans.

5.4.3 I further find that the importer vide their letter dated 06.11.2015 had informed that they had understood that even if any mischief had been committed by Shri Raj Kumar Pal, the ultimate Customs duty liability arises upon them and accordingly, they submitted a Demand Draft dated 06.11.2015 amounting to Rs. 50 Lakhs towards their duty/interest liability. I further find that Shri Sushant Gupta, Director of the noticee No. 1. during his statement dated 23.12.2015 undertook to deposit the whole amount of short paid duty along with interest applicable and requested to issue Show Cause Notice to enable them to approach Settlement Commission for settlement the case.

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5.4.5 I find that all the noticees had approached the Settlement Commission for settlement the case and requested for grant immunity from prosecution and penalties proposed in the SCN. From examination of the documents, Bank statement and material facts submitted by the noticees during investigation and in the Settlement Commission I find that:

(a) Noticee No. 1 handed over all the documents for clearance from Customs to Shri Raj Kumar Pal, who has admitted that he used to change the value of the goods in the invoice and hand over the altered invoices to CHAs who would file Bills of entry for lower value based on doctored invoices.

(b) as per the enquires made by the officers of the SIIB, both the firm of Shri Raj Kumar Pal i.e. M/s Complete Logistics and M/s Complete forwarders Pvt Ltd were not found existing on the given address. Shri, Raj Kumar Pal was also not found at given address, but surprisingly he appeared before Customs Officer when after being contacted on mobile number provided by Shri Sushant Gupta in November 2015. The appearance of Shri Raj Kumar Pal before the Customs officers after he had substantially defrauded M/s Spectro Lab Equipment Pvt Ltd in response to a phone call is surprising. More surprising is the fact that Noticee No. 1 did not lodge a F.I.R, but filed only a complaint with the Police as late as on 11.02.16, i.e, four months after they had come to know of the fraud by Shri Raj Kumar Pal; that the Noticee No. 1 has also not filed any civil suit for recovery of the amount they claim to have been defrauded of logical action to follow in case of genuine loss would have been an attempt to recover the lost sum.

(c) as per the submission of Noticee 02, he was not authorized under Customs House Agent Licensing Regulations, 2004, amended by Customs Broker Licensing Regulation-2013 for handling any work relating to Customs clearances, yet it was claimed by the Noticees No. 01 that he was assigned the customs clearances work which was also substantiate by the account statement of the Noticees no. 01.

as per the submission of advocate of noticee no. 02 that Shri Raj Kumar Pal was hand to mouth which is very surprising that a person who has defrauded the Noticees no. 01 by a substantial amount (i.e. duty difference as per the SCN) can under normal circumstances not be hand to mouth unless, he is not beneficiary of the scam.

(e) Shri Raj Kumar Pal was raising bills upon the Noticee No. 01 which included Customs duties paid for the consignment, handling charges and other charges for his own services and the Noticees no. 01 had claimed to have paid the same to Shri Raj Kumar Pal To verify the clain of Shri Raj Kumar Pal, he was asked to submit the Bank statement but the same was not submitted by him/his advocate and he/his advocate informed that he did not know the Bank Account Number of Shri Raj Kumar Pal which raised the strong suspicion to avoid the investigation and to circumvent the enquiry being made. However, officers of SIIB were able to locate bank account of M/s Complete Forwarders Pvt. Ltd. arid M/s Complete Logistics for the period from April 2013 to March 2017 only. On verification of these bank records, for limited period, it was found that payments made by Noticee No. 01 to Shri Raj Kumar Pal could not be matched with each payment made Bills of Entry wise as claimed by Shri Sushant Gupta in his statement dated 04.11.2015. It was also found in many instances that the sums paid by Noticee No. 01 to Shri Raj Kumar Pal's firms through cheque were withdrawn in cash on the same day or immediately thereafter.

5.5 In view of the above material facts/evidences available and facts submitted before the Settlement Commission and discussed above, I find that that M/s Spectro Lab Equipment Pvt Ltd deliberately and in a very systematic and planned manner arranged to submit doctored and forged documents to evade Custom duties. The role of the co- applicant Shri Raj Kumar Pal as it emerges from the foregoing is that of a dummy planted to take the blame in a situation like the present one when the modus operandi of evasion of duty by Applicants' is detected and act as a buffer. In this view of the things, Shri Raj Kumar Pal does not appear to have actually masterminded the evasion of Custom duty but he has abated and committed the forgery on the sole directions of the noticee No. 01.

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5.7 In view of the above, I hold that the differential duty amounting to Rs. 1,19,54,241/-in SCN has rightly been demanded under Section 28(4) along with interest under Section 28AA of the Customs Act, 1962. 1962.

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5.8 I further find that Penalties have been proposed on the notice under Section 114A and Section 114AA of the Custom Act, 1962.”

(emphasis supplied)

8. The order passed by the Commissioner to the extent it imposes penalties upon

the appellant under sections 114A and 114AA of the Customs Act has been assailed in this appeal.

9. Ms. Reena Khair, learned counsel for the appellant assisted by Shri Shubham Jaiswal made the following submissions:

(i) The appellant had deposited the duty along with interest in good faith. The payment of duty cannot be treated as an admission on the part of the appellant that he was involved in the fraud perpetrated by Raj Kumar Pal;

(ii) There is no allegation in the notice that the appellant has done any act or omission, which is liable for confiscation. There is also no allegation that Raj Kumar Pal committed the fraud at the instance of the appellant;

(iii) It is alleged in the notice that Raj Kumar Pal had forged documents such as import invoice, Bill of Entry and Bank Challans. The notice proposes a penalty on the appellant stating that the appellant is responsible for the actions of Raj Kumar Pal. The adjudicating authority notes in paragraph 5.4.2 that Raj Kumar Pal had admitted to the forgery as well as the commission of the fraud. He has also stated in no uncertain terms that he acted alone, and the correct duty was collected from the appellant and lesser duty paid to the Department by forging invoices and challans. In view of this factual position, no penalty was imposable on the appellant;

(iv) The claim of Raj Kumar Pal that he is hand to mouth and, therefore, cannot be the beneficiary of this fraud is false. The illegal gains from committing such frauds are not kept in the bank account, and the denials of Raj Kumar Pal, are contrary to his voluntary statement recorded under the Customs Act, which statement has not been retracted. Further, Raj Kumar Pal failed to submit his bank details to the Settlement Commission;

(v) The appellant is unaware as to whether Raj Kumar Pal had accomplices with whom he would have shared his illegal gains. In fact, Raj Kumar Pal has been implicated in other cases of smuggling;

(vi) The findings in paragraph 5.5 of the impugned order are beyond the show cause notice and the evidence on record;

(vii) The penalty under section 114AA of the Customs Act is unjustified, in the absence of any evidence to show that the appellant signed or caused to sign any false documents.

(viii) Raj Kumar Pal was not an employee of the appellant. He was also not authorized for performing any unlawful acts. These were done by him, on his own account. The appellant cannot be penalized for the unauthorized acts of an agent;

(ix) No enquiries have been made, by the Department as to how Raj Kumar Pal obtained the original stamp of the Superintendent of Customs and the bank officials. Raj Kumar is a regular offender and has been penalized in several other cases and the appellant is a victim of his illegal acts;

(x) The appellant had filed a police complaint. Despite several visits to the police station, the police failed to take any action against Raj Kumar Pal. There was nothing further, appellant could have done, beyond reporting the offence to the police. It was for the police to undertake the necessary investigations. In fact, the police report clearly states that the matter is still under investigation;

(xi) The appellant had made the necessary deposits towards duty, interest, and penalty. As the deposits are adequate discharge of the liability, the appellant had requested that the proceedings be concluded in terms of section 28(5) of the Customs Act; and

(xii) The amount deposited by the appellant is required to be appropriated towards the confirmed duty demand.

10. Shri Rakesh Kumar, learned authorized representative appearing on behalf of the Department, however, supported the impugned order and submitted that the Commissioner committed no illegality in imposing penalties upon the appellant under sections 114A and 114AA of the Customs Act.

11. The submissions advanced by the learned counsel appearing for the appellant and the learned authorized representative appearing for the department have been considered.

12. What transpires is that Raj Kumar Pal was appointed as Clearing and Forwarding agent by the appellant for undertaking complete logistics, including customs clearance of the lab equipments imported by the appellant. The appellant paid charges, including customs duty to Raj Kumar Pal through banking channels. Raj Kumar Pal arranged the delivery of goods and provided copies of the customs assessed Bills of Entry and the bank attested challans reflecting payments of customs duty. Raj Kumar in his statement recorded on 06.11.2015 stated that he changed the value reflected in the import invoice obtained from the airlines or from the importer by scanning the import invoices and then editing the same. He then lowered the value reflected in the original invoices and Bills of Entry to a value which was not the correct value of the goods. The copies of Bills of Entry generated from Customs were not handed over by Raj Kumar Pal to the appellant. Raj Kumar Pal also admitted that what he charged from the client was a higher element of the customs duty and not the actual amount of customs duty he paid. The relevant portion of the order that makes reference to the statement of Raj Kumar is reproduced below:

"His financial position was not very sound and in order to establish himself, he thought of a plan to mis-declare the import value of the goods in respect of M/s Spectro lab Equipment; that he started changing the value reflected in the import invoices obtained from Airlines or from the importer by scanning the import invoices and then editing the same; that he used to lower the value reflected in the original invoices substantially and filed Bills of Entry on a value which was not the correct value of the goods under import; that the copy of Bills of Entry generated from Customs was never handed over by him to the importer as it was filed on incorrect and lower value, that he used to prepare forged copies of Bills of Entry in his office reflecting the actual value of each import consignment and used to generate the print out reflecting the actual particulars of import consignment

.....

he admitted that what he charged from the client was this higher element of customs duty and not the actual element of customs duty paid to customs; on being pointed out that his act tantamounted to fraud on Government exchequer as the actual Customs duty was charged by him from the client but the lesser customs duty was paid, he stated that as admitted earlier, he required money to establish himself in the business and to bear the expenses of running a business establishment and hence he committed this mistake;”

13. It is also not in dispute that the appellant has deposited the entire duty amount with interest, as is clear from the following chart:

FY

Duty paid by Raj Kumar (A)

Payment made by Spectro to Raj Kumar (B)

Excess payment made to Raj Kumar by Spectro (B-C)

Amount payable as per Customs (D)

Differential duty (D-A)

2011-12

4,91,449

54,50,000

49,58,551

42,99,150

38,07,701

2012-13

4,78,892

53,79,984

49,01,092

54,71,020

49,92,128

2013-14

4,52,267

35,47,120

30,94,853

38,77,489

34,25,222

2014-15

-

64,65,588

64,65,588

-

-

Total

14,22,608

2,08,42,692

1,94,20,084

1,36,47,660

1,22,25,052

A - Duty paid by Rajkumar as per CA Certificate

B - Payment made by Spectro to Raj Kumar as per CA Certificate

C - Excess payment made to Raj Kumar by Spectro as per CA Certificate

D - Amount payable as per Customs as per CA Certificate

E - Amount payable as per Customs as per Notice

14. The only issue that arises for consideration in this appeal is regarding imposition of penalty upon the appellant under sections 114A and 114AA of the Customs Act.

15. It would, therefore, be appropriate to reproduce the relevant portions of these two sections and they are:

"114A. Penalty for short-levy or non-levy of duty in certain cases

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

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."

16. The appellant had filed a complaint against Raj Kumar Pal before the Station House Officer of the concerned Police Station on 11.02.2016 and the same is reproduced below:

"Date: 11.02.2016

The SHO

Sub:- Complaint of fraud and forging of official customs documents against Sh. Raj Kumar Pal R/o 1-3, Pocket-2, Sec 7, Dwarka, New Delhi,

Sir,

It is stated that the complainant Prashant Gupta S/o Shri Ashok Gupta, R/o W-66, Greater Kailash, Part-II, New Delhi 110048 is one of the Director of M/s Spectro Analytical Labs Ltd., E-41, Okhla Industrial Area, New Delhi-110020.

M/s Spectro Analytical Labs Ltd is engaged in import of goods and their trading in India. They also undertake other business work.

We had engaged Sh. Raj. Kumar Pal owner of M/s Complete forwarders arid M/s Complete Logistic, 847/1, Ground Floor, Mata Chowk, Main Vasant Kunj Road Mahipalpur, New Delhi for customs clearing-work.

For Customs clearances, we used to handover original invoice and other documents to Sh. Raj Kumar Pal who filed Bill of Entry in Customs, Paid Customs duty and other charges and then raised bill on us which was paid mostly through cheque.

On 04.11.2015 Customs officers from, SIIB Air Cargo Complex, (Import) Commissionerate, New. Customs House, New Delhi visited our premises and conducted search proceedings against both the firms and resumned records as per detail given in Ann-"A" to the Panchnama prepared in respect of each firm (Copy enclosed).

Statement of Sh. Sushant Gupta, Director in both companies Viz M/s Spectro Lab Equipments Ltd., and M/s Spectro Analytical Labs Ltd., was recorded under section 108 of the Customs Act, 1962 on 04.11.2015 for which he was summoned to the office of Superintendent SIIB, AIR Cargo Complex Import, New Custom House, New Delhi. Another statement Dt:-23.12.2015 was also recorded. The applicant stated that all mis- declaration has been done by Sh. Raj Kumar who played fraud with me as well as the Department.

The Customs Deptt., has issued a Show Cause Notice No.02/2016 Dt:-18.01.2016 to us demanding Customs duty amounting to Rs.30,11,889/- and proposing to take further penal action.

As per the Show Cause Notice, enquires revealed that while we handed over original invoice containing value of goods for declaration in Bill of Entry to be filed with Customs for assessment of duty, Sh. Raj Kumar Pal, frandulently prepared scanned copy of such invoice and declared very low value of import goods in the Bill of Entry filed and consequently paid much lower duty but he generated a separate Bill of Entry and claimed Customs duty and other charges from us on the basis of copy of Bill of Entry delivered to us along with his bill which was paid by us. Sh. Raj Kumar Pal as per his statement Dated 06.11.2015 referred in the Show Cause Notice has admitted to generation of duplicate Bill of Entry, frandulent use of Bank Stamp on TR-6 Challans delivered to us to claim higher amount from us and also the stamp of Superintendent Customs on the forged Bill of Entry.

In the process Sh. Raj Kumar Pal has not only fraudulently charged excess amount of duty of Customs amounting to Rs. 30,11,889/- on the basis of forged Bill of Entry and TR- 6 Challans but also caused damage to our reputation before Customs and has also made us liable to penalties and other legal action by customs.

You are accordingly requested to file on FIR and take action against Sh. Raj Kumar Pal as provided under Cr PC and any other law in force for the crime of fraud and recovery of the amount defrauded. The appellant have to deposit the amount of duty demanded with interest and has deposited Rs. 25 Lakhs already and shall have to pay the balance with interest."

(emphasis supplied)

17. The Commissioner has expressed concerns in the impugned order as to why Raj Kumar Pal had appeared before the authorities after he had substantially defrauded the appellant and as to why the appellant lodged a police complaint instead of a First Information Report and as to why the appellant had not instituted a civil suit against Raj Kumar Pal for recovery of the amount. The Commissioner, for these reasons, concluded that the appellant had deliberately and in a very systematic and planned manner arranged to submit doctored and forged documents to evade payment of customs duties and Raj Kumar Pal was a dummy planted by the appellant. It is for this reason that the Commissioner imposed penalties upon the appellant under sections 114A and 114AA of the Customs Act.

18. Such a finding has been recorded by the Commissioner on the basis of conjectures and surmises. There is nothing on record to indicate that the appellant and Raj Kumar Pal had colluded. The fact that the appellant had paid the correct amount of duty to Raj Kumar Pal through banking channels does not support the finding recorded by the Commissioner. Raj Kumar Pal clearly stated in his statement before the customs authorities that he had received the correct amount from the appellant but for his own gains he paid a reduced amount. The appellant has deposited the differential amount of duty with interest.

19. Section 114A of the Customs Act provides that where the duty has been short paid for reason of collusion or any willful statement or suppression of facts, the person who is liable to pay duty shall be liable to pay the penalty equal to the duty.

20. In the absence of any collusion or any willful mis-statement or suppression of facts by the appellant, penalty under section 114A could not have been imposed upon the appellant.

21. Penalty under section 114AA of the Customs Act is imposed if a person knowingly makes, signs or uses or causes to be made, signed or used, any declaration is false or incorrect in 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.

22. The appellant had not submitted any Bills of Entry. They were submitted by Raj Kumar Pal. The appellant also had no knowledge that any incorrect statement was made by Raj Kumar Pal. Penalty could not have been imposed upon the appellant under section 114AA of the Customs Act.

23. It is not in dispute that the appellant had deposited the entire amount of duty with interest. This fact has also been noted by the Commissioner, but this amount has not been appropriated. This amount is, therefore, required to be appropriated against the demand of duty that has been confirmed.

24. The impugned order dated 29.08.2018 passed by the Commissioner to the extent it imposes penalty upon the appellant under sections 114A and 114AA of the Customs Act is, therefore, liable to be set aside and is set aside. The amount already deposited by the appellant shall be appropriated towards the demand of duty that has been confirmed. The appeal is, accordingly, allowed to the extent indicated above.

(Order Pronounced on 29.01.2025)

