

## Contesting disproportionate fines and penalties under Customs

By: Team Tax Connect

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Fines and penalties under Customs can be disproportionate and may need to be contested. However, to contest these, more is required to be done than merely citing case laws. Let us understand some penal provisions under Customs as follows –

### **SECTION 111: Confiscation of improperly imported goods, etc.**

### **SECTION 112: Penalty for improper importation of goods, etc.**

Any person, -

(a) 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 111, or abets the doing or omission of such an act, or...

### **SECTION 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:...

### **SECTION 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.

### **SECTION 117: Penalties for contravention, etc., not expressly mentioned**

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

In the case of M/s ANGEL STARCH & FOODS PVT LTD Vs COMMISSIONER OF CUSTOMS, CHENNAI [2025-VIL-1751-CESTAT-CHE-CU], the claim for assessment under the EPCG Scheme was rejected due to capital goods being second hand and the goods were assessed to duty before their clearance. Duty was also paid as assessed. Thus, there was no demand in terms of Section 28 of the Customs Act. Under such circumstances imposition of penalty under section 114 A of the Customs Act was also not legally sustainable. Reliance was placed on the decision in **Armaity S Patel Vs CC (Imports) Mumbai**, 2014 (310) ELT 313 (Tribunal - Mumbai) - 2014-VIL-2354-CESTAT-MUM-CU. The quantum of redemption fine, the demurrage and detention charges incurred, etc should also be taken into consideration while arriving at the quantum of redemption fine as held in the decision in **Jain Exports Private Limited, Vs Union of India** - 1990 (47) ELT 213 (SC) - 1990-VIL-38-SC-CU and CC Amritsar Vs. Santan Sales & Services, 2010 (252) ELT (382) Tribunal (New Delhi) - 2009-VIL-651-CESTAT-DEL-CU.

A mere ipse dixit that the importer is found to have misdeclared the value of the goods cannot lead to disproportionate fines. The extenuating circumstances leading to the import of the disputed goods for purposes of determining the quantum of redemption fine. While determining the question of quantum of redemption fine it is essential to consider the facts and circumstances relevant to the bona fide conduct of the importer in importing the goods, as held by Apex Court in Jain Exports Private Limited, Vs Union of India - 1990 (47) ELT 213 (SC) - 1990-VIL-38-SC-CU.

Again in the case of Commissioner of Customs Vs Roshan Overseas (CESTAT Chennai), Assessee-importer (M/s. Roshan Overseas), had filed a Bill of Entry for 645 bales of fabric. Commissioner of Customs confiscated a consignment of 645 bales (1,07,806 sq. mtrs.) of

various fabrics imported by M/s. Roshan Overseas under Bill of Entry No. 65. The Adjudicating Authority had imposed a combined penalty under sections Sections 112, 114A, and 114AA without proper application of statutory provisions and was directed to reconsider penalty in accordance with law.

**Residual Provision Of Section 117 Can't Be Invoked Upon Realising That Penalties Can't Be Imposed U/s 111 and 112 Of Customs Act as was held by The Bombay High Court.**

In one of the cases, respondents import goods (edible oil) discharged through high-pressure pipelines from the vessel directly into tanks in the gated complex in the port area. After obtaining the necessary permissions from the authorities, some of the material may have been stored in non-bonded tanks but within the same gated complex. The department submitted that the appellant stored material more than the value permitted to be stored. CESTAT erred in relying upon the decision of Bombay High Court in Commissioner of Customs (Import) Mumbai vs. Finesse Creation Inc., when, in fact, the Gujarat and Madras High Courts have taken a contrary view. It was Held that there is no question of law, but matter of fact and the same have been dealt with by CESTAT

## LET'S DISCUSS FURTHER!

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