

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Customs Appeal No.75383 of 2018**

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/1581-1592/2017 dated 30.10.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

**Shri Charanjit Singh**

(Flat No.B/6, Mogus House, Sardar Pratap Singh Nagar, Opp. Sitaram Mills, N.M.Joshi Marg, Chinchpokli, Mumbai-400011.)

**...Appellant**

*VERSUS*

**Commissioner of Customs (Port), Kolkata**

**.....Respondent**

(15/1, Strand Road, Custom House, Kolkata-700001.)

**WITH**

**(i) Customs Appeal No.75384 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (ii) Customs Appeal No.75385 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (iii) Customs Appeal No.75386 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (iv) Customs Appeal No.75387 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (v) Customs Appeal No.75388 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (vi) Customs Appeal No.75389 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (vii) Customs Appeal No.75390 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (viii) Customs Appeal No.75391 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (ix) Customs Appeal No.75392 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (x) Customs Appeal No.75393 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata); (xi) Customs Appeal No.75406 of 2018 (Shri Charanjit Singh Vs. Commissioner of Customs (Port), Kolkata);**

(Arising out of Order-in-Appeal No.KOL/CUS(Port)/AA/1581-1592/2017 dated 30.10.2017 passed by Commissioner of Customs (Appeals), Kolkata.)

**APPEARANCE**

Shri A.M.Sachwani, Advocate for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)**

**FINAL ORDER NO. 75586-75597/2022**

DATE OF HEARING : 11 November 2022

DATE OF DECISION : 19 December 2022

**P.K.CHOUDHARY :**

The issues involved in all these Appeals are common and therefore all the Appeals are taken up together for hearing.

2. The Appellant filed these Appeals against imposition of penalty under Section 112(a), 112(b) & 114AA of the Customs Act, 1962.

3. Briefly stated the facts of the case are that Show Cause Notices were issued in respect of fraudulent import of vehicles declared as brand new vehicles of foreign origin through Kolkata Port on different dates and cleared against Bills of Entry. The importers paid the duty and claimed the benefit of Notification No.21/2002-CUS dated 01.03.2002. It was found that the importers availed the exemption wrongly with the help of various persons. The Adjudicating authority passed various orders and imposed penalty on different persons.

4. The Appellant herein filed the Appeals against imposition of penalties as under :-

Appeal No.	Amount of Penalty
C/75383/2018	Rs.3,00,000/- u/s 112(a)
C/75384/2018	Rs.4,00,000/- u/s 112(a), (b) & 114AA
C/75385/2018	Rs.1,00,000/- 112(a), (b) & 114AA
C/75386/2018	Rs.1,00,000/- 112(a), (b) & 114AA
C/75387/2018	Rs.2,00,000/- u/s 112(a)
C/75388/2018	Rs.2,00,000/- u/s 112(a)
C/75389/2018	Rs.2,00,000/- u/s 112(a) Rs.1,00,000/- u/s 112(b)
C/75390/2018	Rs.2,00,000/- u/s 112(a) Rs.1,00,000/- u/s 112(b)
C/75391/2018	Rs.5,00,000/- u/s 112(a)
C/75392/2018	Rs.2,00,000/- u/s 112(a) Rs.1,00,000/- u/s 112(b)

C/75393/2018	Rs.2,00,000/- u/s 112(a) Rs.1,00,000/- u/s 112(b)
C/75406/2018	Rs.2,00,000/- u/s 112(a) Rs.1,00,000/- u/s 112(b)

5. Heard both sides and perused the appeal records.

6. I find that it was alleged that the cars were old and used (second-hand) and the importers were not traceable. It is further alleged that the imported cars were not new cars and therefore cars were subsequently seized. The imported cars were old and used (second-hand cars) and therefore the benefit of exemption is denied. The Adjudicating authority in the Adjudication Order No.KOL/CUS/ADC/159/Adjn (Port) dated 07.04.2014 has observed as under:-

*"7. I also impose a penalty of Rs.3,00,000/- (Rupees Three Lakhs) each on (1) Shri Charanjit Singh Nandrayog, (Noticee No.2, having his address at 1<sup>st</sup> Floor, 265, Sant Niwas, SBS Road, Opp. Sher-e-Punjab Hotel Fort, Mumbai – 400001) and (2) Shri Rajesh Jethani (Noticee No.3, having his address at SD Banglow No.131, Adipur (Kutch) Gujrat – 370205/ Alternate Address – C/O M/s. Pride City General Trading LLC, P.O. Box 32371, Dubai, (UAE) under Section 112(a) of the Customs Act, 1962."*

7. The Ld.Commissioner(Appeals) in the impugned order has observed as under:-

*"14. I have carefully considered the Orders-in-Original, Grounds of Appeal, Oral as well as written submissions of Appellant. The findings of Order-in-Original are that the appellant Shri Charanjit Singh actively took part in the operations regarding clearance of fraudulently imported high-end cars into India through Kolkata Port for himself and in the name of various importers as an accomplice of Shri Rajesh Jethani, stated to be based in Dubai, UAE from where he have been controlling the business of sale and purchase of used cars. Shri Charanjit Singh in his statements recorded under Section 108 of Customs Act, 1962 admitted that he used to control the operations regarding clearance of the vehicles from Kolkata Port with the help of Shri Balu Patil and Shri Suresh Halde. Suresh Halde used to clear the vehicles through the CHA firm, M/s. Baid Organization Pvt.Ltd., Kolkata. Appellant, Shri Charanjit Singh also arranged finance for payment of customs duty, other incidental charges and remuneration of the CHA firm etc."*

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16. Also, in the instant appeals, I find that the appellant has aided in the fraudulent import of cars and is liable to be penalized under Section 112(a), (b) & 114AA.

8. Ld.Counsel for the Appellant submits that the appellant is not the beneficiary. In the instant case he has also referred to the statement of the Appellant.

9. The Appellant submits that the Ld.Appellate authority have passed common order for the 12 Appeals, thereby the Appellate authority cannot pass common order assailing the said Appeals.

9.1 The allegations are made that Appellant had actively participated in the operations regarding fraudulent import of the said cars and undertook the clearance of the cars from Kolkata port, where the said car was cleared as per the declaration. There was no mis-declaration at all as these documents were being forwarded from foreign countries. At the most, the Appellant has acted as mode to hand over all the documents. The Appellant is not aware about the contents of documents.

9.2 The allegation of abetment charged upon on the Appellant are totally false and baseless in nature.

10. The Appellant submits that Section 114AA is not applicable in charging the Appellant for penalty when documents on the basis of which Appellant is charged are not in the manner laid down under Section 138C. The same should be authenticated in the manner which is prescribed under Section 138C. As Section 138C is not proved then the penalty levied under Section 114AA will not be attracted.

11. I am not impressed by the submissions of the Ld.Counsel, appearing on behalf of the Appellant. The main contention of the Ld.Counsel is that DRI Officer, without any investigation, has come to a conclusion that the cars were old and used. He further submitted that the penalties on the Appellant have been imposed merely by relying on the statement of the CHA that the cars were dealt by the Appellant.

12. I find that the authorities below had discussed in detail in respect of imposition of penalty on the Appellant. It is evident from the record that in some of the cases, the Appellant's involvement cannot be denied. However, I find force in the submission of the Appellant that the quantum of penalty is quite excessive.

13. It is also observed that the proceeding is hit by the bar of limitation. Availing of benefit of Notification, which the Revenue subsequently formed an opinion was not available, cannot lead to the charge of misdeclaration or mis-statement, etc. and even if an importer has wrongly claimed the benefit of the exemption, it is for the department to find out the correct legal position and to allow or disallow the same.

14. However, taking the overall facts and circumstances into consideration, the quantum of penalty is reduced @10% of the penalty imposed in each case.

All the Appeals are disposed of in the above terms.

(Order pronounced in the open court on 19 December 2022.)

Sd/  
**(P.K.CHOUDHARY)**  
**MEMBER (JUDICIAL)**

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