

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1**

CUSTOMS APPEAL NO. 51056 OF 2019

[Arising out of Order in Original No. VIII/ICD/TKD/6/Adj/Exp/19/2015 dated 15.09.2017 passed by the Commissioner of Customs, Export, New Delhi]

M/S DAYA ENTERPRISES

Appellant

(Through its Sole Proprietor- Shri Pankaj Gupta)
214/3, Padam Nagar,
Kishan Ganj,
New Delhi-110007

Vs.

**THE COMMISSIONER OF CUSTOMS (EXPORT)
ICD, TUGHLAKABAD, NEW DELHI**

Respondent

Appearance:

Shri Priyadarshi Manish and Ms. Tanya Sharma, Advocates for the appellant

Shri Rakesh Kumar, Authorised Representative for the respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 58078 /2024

Date of Hearing : 12/07/2024

Date of Decision : 22/08/2024

P. V. SUBBA RAO:

1. M/s Daya Enterprises¹ filed this appeal to assail the Order in Original dated 15.09.2017 passed by the Commissioner of Customs (Exports) ICD TKD² whereby he confirmed demand of Customs duty of Rs. 53,40,105/- on the appellant and imposed fine of Rs. 1,65,49,893/- and the penalty of Rs. 94,51,763/-. The operative part of the order is as follows:

1 **appellant**

2 **Commissioner**

Order

- i. Undeclared counterfeit goods of brand indicated in table 4 collectively valued at Rs 21,89,220 /- which are prohibited are confiscated under Section 111 (d) of the Customs Act, 1962.
- ii. Mis-declared goods other than counterfeit (Table 7 at Sl No 1 to 9) collectively valued at Rs 1,75,61,892/- are liable for confiscation under Section 111 (1) and 111(m) of the Customs Act, 1962.
- iii. The goods as mentioned at Sl. No 1 to 10 in table 9 have been provisionally released to importer against bond of value Rs 1,65,49,893/- and bank guarantee of Rs 13,30,000/-. Accordingly I confiscate the entire bond value towards the redemption fine of Rs 1,65,49,893/- that is imposed for release of the said goods. This amount should be recovered by way of encashment of the bank guarantee executed by the Noticee and thereafter by enforcement of bond executed by the noticee 1, and in case the same cannot be enforced the said amount should be recovered as penalty.
- iv. The goods as mentioned at Sl No 11 in table 9 above are available for confiscation and are confiscated, but allowed to be redeemed on payment of redemption fine of Rs 11,42,993/-
- v. The Customs Duty of Rs 53,40,105/- collectively determined on goods other than branded is demanded and confirmed. The duty of Rs 6,11,424/- paid by the importer against the B/E No 9371947 is appropriated against the duty so demanded and confirmed. Accordingly duty of Rs 47,28,681/- is recoverable from the Noticee 1 under Section 28 A of the Customs Act, 1962 along with the interest as applicable under Section 28AA.
- vi. Penalty of Rs. 94,51,763/- is imposed in terms of Section 112(a) read with section 114A and 114AA of the Customs Act, 1962 on Sh. Pankaj Gupta, Proprietor M/s, Daya Enterprises, 214/3 Padam Nagar, New Delhi.
- vii. The counterfeit branded goods for which the notice 2, Noticee 3, Noticee 4 and Noticee 5 are brand holders registered with Customs have been confiscated absolutely as mentioned at 'I'. Noticee 2, Noticee 3, Noticee 4 and Noticee 5 should get the good destroyed

at their cost at the earliest and not later than three months from the date of this order.

- viii. Show cause notice issued by the Commissioner ICD TKD, New Delhi vide C No. VIII/ICD/10/TKD/SIIB-Exp/ Inv/Daya/188/2015 dated 02.12.2015 is disposed accordingly.”

2. We have heard learned counsel for the appellant and the learned authorized representative for the revenue and perused the records.

3. The facts which lead to issue of the impugned order are as follows:

4. The appellant filed Bill of Entry No. 9371947 dated 27.05.2015 to clear goods for import through their Customs Broker. These goods were imported from M/s Pride International Company Ltd., China and came stuffed in a container. The goods declared were as follows:

Sl. No.	Description of goods as per BE	No. of cartoons	Qty.
1	Resin Show Piece	4	11 pcs
2	Imitation chain (Metal+glass)	368	5832.80 kgs
3	Imitation Chain used in Artificial jewellery (Iron Ball)	89	1668.75 kgs
4	Plastic Optical Box	18	1800 Pcs
5	Ladies Purse	110	3300 pcs
6	Sun Goggals	5	150 DZ
7	Wind Cheater	10	1000 pcs
8	PU Ball	40	26400 pcs
9	Baby car	2	1 Pcs
10	PVC Table Cover (1 Roll-40 M)	25	50 Rolls
11	PU Wheel Cover	124	6950 pcs
Total		795	

5. Acting on intelligence that the importer had mis-declared the goods as well as their quantity in the Bill of Entry, officers of the Special Investigation and Intelligence Branch³ examined the goods on

04.06.2015 under a Panchnama and drew samples for further enquiry. They also seized the goods on the belief that they were liable for confiscation under section 111 of the Customs Act, 1962⁴. The goods which were actually found during examination were as follows:

SI No.	Description of goods As per BE	Goods found in actual	Description mentioned on cartoons	Sizes	No. of cartoons	Total quantity (weight/Pcs)
1	Limitation accessories used in artificial jewellery	Glass Chatton attached with iron holder	Taiwan Elmo	SS16	21	835.8 kg.
				SS18	10	336.04 Kgs
				SS28	7	273.2 Kgs
			Iron Elmo	SS16	14	423.93 Kgs
				SS22	6	183.1 Kgs
				SS28	15	384.9 Kgs
				SS38	16	355.64 Kgs
				Total Weight	89	2792.61 Kgs
2	Imitation Chain (Metal+Glass)	Cup Chain	Laser	PP24-280	80	1821.1 Kgs
				PP24-198	29	310.4 Kgs
				PP31-230	12	310.4 Kgs
				PP31-150	15	312.4 Kgs
				PP18-235	48	959.71 Kgs
				PP24-196	8	215 Kgs
				PP14-275	155	2853.46 Kgs
				PP14-326	11	218.37 Kgs
				Total Weight	358	7154.44 kgs
		Fashion Sheet		SS8.5	10	269.1 Kgs
3	Wind Cheater	Wind Cheater		Free	10×100	1000 pcs
4	PU Ball	PU Ball		Small	20×600	12000 pcs
				Large	20×720	14400 pcs
5	Baby Car	Baby Car			2	2 pcs
6	PVC Table Cover	PVC Table Cover			25×2×40	2000 mtr
7	PU Wheel Cover	Steering Wheel Cover (auto part)		K&P Accessories (large size)	81×60	4860 pcs
8	Resin Show Piece	Resin Fish			1×8	8 pcs

9	Resin Show Piece	Show Piece			3×1	3 pcs
10	Plastic Optical Box (empty)	Optical empty boxes of diff. intl. brands(Total no. of cartoons-18)	Brand name mentioned on boxes			Qty in Pcs.
			PRADA			194
			MARC JACOBS			189
			RAY BAN			203
			Giorgio Armani			24
			CHROME HEARTS			98
			MIU MIU			87
			EMPREIOR ARMANI			20
			LOUIS VUITTON			383
			CHANNEL			92
			CARTER			100
			DITA			55
			DIOR			40
			MONT BLANC			40
			GUCCI			84
			DOLCE GABBANA			41
			TOM FORD			100
			CHOPARD			40
			VERSACC			103
			HERMES			70
			CARTIER			50
11	Ladies purses	Ladies hand bags of diff. International brands	Brand name mentioned on individual bags like			Qty. in pcs
			VERSACC			78
			LOUIS VUITTON			883
			UN BRANDED			990
			MICHALE KORS			632
			GIANNI VERSACE			105
			VALENTINO (GARAVANI)			90
			LOUIS VUITTON	SMALL HAND BAGS		144
			PRADA	SMALL HAND BAGS		95
			BURBERRY			310
			GIORGIO ARMANI	LAPTOP BAGS		24

			LOUIS VUITTON	LAPTOP BAGS		48
			MONT BLANC	LAPTOP BAGS		56
			GUCCI	LAPTOP BAGS		52
			BOSS	LAPTOP BAGS		52
			CELINE			50
			GUESS			40
			GIORGIO ARMANI			30
			CHANEL	CLUTCH		70
			CHANEL	HAND BAGS		120
			MIU MIU			40
			BOTTEGA VENETA			150
			CELINE			80
			CELINE			80
			TOMMY HILFIGER			70
			FENDI			100
			CHARLES KETH	SMALL HAND BAGS (PURSE)		70
12.	SUN GOGGALS	READING GLASS & SOME SUN GOGGLES OF DIFF BRAND NAME MENTIONED ON THEM	READING GLASS (Hand made acetate)	UNBRANDED	1 (29×20)	580
			SUN GLASSES	UNBRANDED	1 (38×20)	760
			Sun Glasses	UMBRANDED	1 (42×20)	840
			READING GLASS (In one cartoon)	Tag-huier	10×20	200
				RAY BAN	6×20	120
				Porsche Design	6×10	60
				Channel	3×20	60
				Bvglari	2×20	40
				Careera	1×20	20
				TOM FORD	2×20	20
				Mark Jaccob	3×20	60
				Emporio Armani	2×20	40
				Unbranded	35×20	700
		Googles of different brand one cartons		Mark Jaccobs	51	51

				Channel	2	2
				DOLCE GABBANA	2	2
				GUCCI	8	8

6. While the goods which were declared were ladies purse, ladies hand purse/ hand bags sunglasses, optical boxes, empty boxes (all unbranded) on examination the goods were found having different international brand name/logo affixed//embossed/ imprinted on them such as Louis Vuitton, Gucci, Tommy Hilfiger, Emporio Armani, Mont Blanc, Channel, Dolce Gabana, Ray Ban, Porsche design etc. The nature of the goods found was also different in some cases from what was declared in the Bill of Entry.

7. Shri Pankaj Gupta, proprietor of the appellant firm was summoned and he gave statements on 05.06.2015, 12.06.2015, 30.09.2015. In his first statement on 05.06.2015 he said of the goods mentioned in the Bill of Entry at serial no's 1, 2, 3, 7, 8, 9, 10 and 11 were his own goods worth Rs. 24,00,000/- and the goods mentioned at serial no's 4, 5, 6 belonged to one Smt. Neetu Jain and these were worth Rs. 16,00,000/- and he neither knew the correct business address or the residential address of Smt. Neetu Jain. In his second statement on 12.10.2015 also, he asserted that the goods at serial no's 4, 5, 6 of the invoice belong to Smt. Neetu Jain whose address he did not have. In his third statement given on 30.09.2015 he said that he had earlier made false statements that the goods at serial no's 4, 5, 6 belonged to Ms. Neetu Jain and, in fact, they were all his. He had placed the purchase order over telephone on his Chinese supplier and

obtained the goods. He further said that he had ordered only unbranded goods but wrong consignment was sent by the supplier and he was not responsible for the mistake of the supplier. He disowned the branded goods as he had not placed any order for them and they were not his goods. If these goods were infringing IPR rules and regulations he said that he had no objection to them being detained or seized or absolutely confiscated by the authorities and that he would not claim the ownership of those goods in future. It was his humble request to detain or confiscate the goods infringing IPR laws and rules and to release the rest as soon as possible. He did not want any show cause notice or personal hearing and said that he was ready to pay differential duty fine or penalty as required.

8. Sh. Samir Jha, Customs Broker of KVS Cargo, gave statement on 21.10.2015 in which he said that his office had filed the Bill of Entry on the basis of the documents produced by the importer such as the invoice, packing list, declaration form and Bill of Lading. Investigations were continued and notices were sent to the right holders of the IPR. After physical examination of the samples, the authorized representatives of the brand holders informed that the goods with the brand names were counterfeit.

9. As the goods were mis-declared in the Bill of Entry, a show cause notice⁵ was issued proposing to reject the declared value under Rule 12 and re-determine the value under Rule 9 of the Customs Valuation (Determination of value of import goods) Rules, 2007⁶. It was also

5 SCN
6 Valuation Rules

proposed to confiscate the goods under section 111(d), (l), (m), (j). Differential duty was demanded under section 28 along with applicable interest under section 28AA. Penalties were also proposed to be imposed under section 112, 114A and 114AA of the Act. A personal hearing was also fixed but the appellant had not appeared.

10. The Commissioner passed the impugned order in which he held that insofar as the branded goods are concerned, the appellant had explicitly abandoned them and had also undertaken to not claim those goods in future. The reason for this is that the appellant had never placed an order for these goods and they were only sent by mistake by the Chinese supplier. He found that in respect of some goods the appellant had tried to mislead the investigation by wrongly claiming that they belonged to one Smt. Neetu Jain and later admitted that they belonged to him. The Commissioner held that by not making the correct declaration in the Bill of Entry, the appellant had violated section 46 and, therefore, the imported goods were liable for confiscation under section 111(l) & (m) of the Act.

11. As far as the counterfeit branded goods are concerned, the Commissioner confiscated them absolutely as the appellant had explicitly abandoned the goods. He rejected the value of remaining goods under rule 12 of the Valuation Rules and re-determined their value under rule 9 of the Valuation Rules. The goods which were initially seized were provisionally released on the direction of the High Court against the bond and bank guarantee. Since the goods were mis-declared the Commissioner held that they were liable for confiscation under section 111(l) and (m). He, however, allowed the

appellant to redeem them on payment of redemption fine of Rs. 11,42,993/-. Since the goods were held liable for confiscation, penalty was found to be imposable under section 112 (a) read with section 114A and 114AA on Sh. Pankaj Gupta.

12. Learned counsel for the appellant made the following submissions:

- (a) The Commissioner did not properly consider the show cause notice as he had not dealt with the question of rejection of the declared value under rule 12 of the Valuation Rules. He had also not dealt with how the rule 9 of Customs Valuation Rules is applicable in the present case without going through the remaining rules;
- (b) The Commissioner erroneously ordered confiscation of the counterfeit goods and did not decide the value declared by them on such goods;
- (c) The right holder as per Intellectual Property Right (Imported goods) Enforcement Rules, 2007 had not joined the investigation;
- (d) The appellant had placed orders for unbranded goods as a part of its regular business but during examination, some branded goods found. Since the brand holder had not joined the investigation, the goods could not have been confiscated absolutely. The imposition of penalty is also, accordingly, incorrect. He placed reliance on the following case laws:

- (i) **Century Metal Recycling Pvt Ltd. and Another vs. Union of India and Others⁷**
- (ii) **Commissioner of Central Excise and Service Tax, Noida vs. Sanjivani Non-Ferrous Trading Pvt Ltd. ⁸**
- (iii) **Kranti Associates Pvt Ltd. and Another vs. Masood Ahmed Khan and Others⁹**
- (iv) **Commissioner of Customs (Import), Mumbai vs. Ganpati Overseas through it Proprietor Shri Yashpal Sharma and Another¹⁰**
- (v) **Srk Enterprises vs. Commissioner of Customs (Import), Nhava Sheva¹¹**

13. Shri Rakesh Kumar, learned authorized representative appearing for the department has made the following submissions:

- i) The impugned order is detailed and well-reasoned;
- ii) The entire Bond value was confiscated since all the goods (Counterfeit as well as Non-counterfeit) were liable for confiscation and appropriate redemption fine has been imposed as per law. The Redemption Fine was determined as per section 125 of the Act at Paragraph 35 to 37 of the impugned Order. These calculations in brief are as follows:-

Total assessable Value= 1,75,61,892/-(as re-determined and accepted by the Appellant)

Total Duty payable= 53,40,105/-

Reasonable profit @ 10%, the market Value shall be =
 $1,75,61,892 + 53,40,105) \times 110\% = \text{Rs. } 2,51,92,197/-$

7 (2019) 6 Supreme Court Cases 655
8 (2019) 2 Supreme Court Cases 378
9 (2010) 9 Supreme Court Cases 496
10 (2023) 10 Supreme Court Cases 484
11 2012 (280) ELT 264 (Tri.-Mumbai)

Maximum redemption Fine as per Proviso to Sec 125(1)= (Rs 2,51,92,197/- Rs 53,40.105) = 1,98,52,092/-

RF for goods at sr. No 11 of table 9 = 11,42,993 (**Not disputed**)

- iii) The appellant knowingly mis-declared the values by manipulating the import documents. As per the appellant's statement dated 05.06.2015, the payments were also manipulated and the balance amount would be adjusted with Pride international.
- iv) The appellant had dis-owned the counterfeit goods and also said that he would not claim them in future. As is evident from page 143 of the Relied Upon Documents submitted by the appellant, the appellant accepted the methods of valuation adopted by the Department and therefore, there was no need for the adjudicating authority to analyse them separately.
- v) Admittedly, the goods were mis-declared in terms of description, quantity and valuation and this admission of the appellant has not been retracted till date. Further, the appellant waived the SCN and personal hearing and wanted the goods to be released and he agreed to pay the differential duty as per the calculation of value by the department. He also admitted to submitting manipulated documents to the Customs and said that the balance amount used to get adjusted with M/s Pride international (Neetu Jain). Later, he said that in fact, that all unbranded goods belonged to him only. Since some goods were disowned and the mis-declaration of the remaining goods was admitted and the method of re-determination of value by the

department was accepted, there was no need to give details of the method of re-determination of value as stated at Para 13.1 onwards as per the said SCN.

- vi) Therefore, the proper officer had reasonable doubt about the declared value and correctly rejected the declared transaction value under Valuation Rule 12. Reliance is placed on **Commissioner of Customs, Delhi vs. M/s Hanuman Prasad & Sons.**¹²
- vii) Even in paragraph R of the appeal, the appellant admitted that it was not interested in the counterfeit goods and had disowned them.
- viii) the impugned Order does not warrant any inference which may be upheld and the appeal may be dismissed.

14. We have considered the submissions advanced by both the sides and perused the records.

15. The questions to be decided by us are if the Commissioner was correct in:

- (a) Absolutely confiscating branded counterfeit goods;
- (b) Rejecting the transaction value of the remaining goods under Rule 12 and re-determining their value under Rule 9 of the Valuation Rules;
- (c) Confiscating the goods under section 111(l) and 111(m); and

(d) Imposing penalty on the appellant under section 112 (a) and section 114A and 114AA.

16. As far as the branded goods are concerned, we find that the appellant had categorically abandoned the goods and waived the show cause notice and personal hearing. Right holders were called and they affirmed that they were counterfeit goods. The Commissioner confiscated them under section 111(d) which provides for confiscation for goods which are imported contrary to any prohibition imposed under the Act or any other letter for the time being in force. It is the case of the department that the goods were imported in violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 read with Section 11 of the Customs Act, 1962. The case of the department is that they are counterfeit goods.

17. Learned counsel for the appellant submitted before us that certain procedures were not followed and the right holders had not joined the investigation. Learned authorized representative appearing for the department submitted that the appellant cannot be permitted to take this stand at this stage because the appellant's consistent stand has been that these branded goods did not belong to him at all and he had not placed any order for such goods and that they are sent to him by mistake of the Chinese supplier. He also asserted that goods can be confiscated absolutely and that he abandons any claim to the goods and would also not claim those goods in future.

18. On perusal of the show cause notice and the impugned order, we find that the submissions of the learned authorized representative

are correct. The appellant abandoned these goods and had also explained the reason for abandoning them that they did not belong to him at all and that he had not placed any order for them.

19. It is not only a clear a case of relinquishing the title to the goods but, in fact, he went one-step further to claim that he had never placed had any order for them and that the goods did not belong to him. He had not responded to the show cause notice or participated in the personal hearing. We find it impermissible to the appellant to now take U-turn and claim those goods which did not belong to him at all. Therefore, the absolute confiscation of the counterfeit goods needs to be sustained.

20. As far as the valuation of other goods is concerned, the declared value in the Bill of Entry was for certain goods described in the Bill of Entry, invoice and packing list. What were actually imported were a different set of goods. Evidently, the price of the declared goods cannot be the same as the price of much larger goods quantity of goods found during examination. The show cause notice proposed to reject the declared transaction value under rule 12 for this reason. In paragraph 17 of the show cause notice, it was indicated that valuation could not be done under rule 4, 5, 7 and 8 of the Valuation Rules and that there was no contemporaneous data of identical or similar goods. For this reason, it was proposed to conduct a market survey or inquiry as per rule 9 (Residual Method). The market survey was conducted after taking the representative samples of the goods in the presence of Pankaj Gupta, proprietor of the appellant firm and others to ascertain their market value in India. From the prices found in market inquiry,

abatement of 60% was given in lieu of the duty and profit margin and other expenses to arrive at the assessable value. In respect of other goods, namely, chattons studded in chain, clutcher it was found that they were imported at Rs. 2,000/- to Rs. 4,000/- per Kg. Glass chattons attached with iron holder were similarly valued reckoning the value of the chatton and the iron clutcher. The value of the imitation chains were similarly valued considering the weight of chattons, weight of metal and average price of the metal and chattons. It is recorded in the show cause notice that this method of valuation was accepted by the importer and its Customs Broker and importer had paid duty on the enhanced value. In respect of certain other items such as wind cheater, PU ball, baby car, PVC table cover, PU wheel cover and resin show piece, the declared values were accepted.

21. Thus, the total assessable value was proposed to be re-determined in the show cause notice.

22. The appellant had not contested the proposals in the show cause notice nor attended the personal hearing.

23. The Commissioner confirmed the proposals in the show cause notice. The first question to be decided by us is whether the Commissioner had a reasonable belief to doubt the truth and accuracy of the transaction value as required under rule 12 to reject it. Evidently, when the goods which were imported were different from the declarations in terms of quality and quantity and description, the price declared in the invoice value cannot be taken as a price of the goods, which have actually been imported. We have no hesitation, in

the facts of this case, in concluding that the Commissioner had reasonable doubt and had correctly rejected the transaction value under rule 12.

24. Once the transaction value is rejected under rule 12, value has to be determined following through Rules 4 to 9 sequentially. Rule 4 requires the Valuation to be determined on basis of the value of identical goods. Rule 5 requires them to be on the basis of value of similar goods and the show cause notice recorded that such values were not available. We have no reason to doubt this recording in the SCN in the absence of any contrary evidence that such values were available. Rule 6 is not an actual method of determination of value but only says that Valuation Rule 8 can be employed before Valuation Rule, 7 at the choice of the importer. Rule 7 deals with the deductive value where the values of identical or similar goods imported and sold in India are reckoned and after giving abatement towards duties and other margins, the value is determined. Rule 8 deals with cost of manufacture and it requires the value to be based on the cost of manufacture plus an amount towards profit and general expenses. The show cause notice recorded that Rule 7 and Rule 8 were also not feasible in the case. The appellant had not produced before us any evidence to show identical goods were being sold in the market so that rule 7 could have been applied or that identical goods were being manufactured in India so that rule 8 could have been applied. Under these circumstances, it was appropriate for the department to have followed rule 9 which is the residual method to be employed using principles consistent with the remaining rules. In respect of certain

goods the values which were declared were accepted as such. In respect of certain goods market survey was conducted in the presence of the appellant and from the values found in the market survey an abatement of 60% was given towards duty and profit margin to determine the value. In respect of certain other goods such as chattons with iron holder, imitation chains and chattons, the value of chattons was ascertained from the general imports and the value of the metal also ascertained and based on the metal used and the chattons the value of the jewellery and glass chattons with iron holders were ascertained. We find that this is similar to the valuation method usually followed by jewellery shops. If a gold ornament studded with stones is to be sold, the weight of the stone and its value and the weight of the gold and its value are indicated and the total value of the ornament is calculated. The method followed by the officers in the facts of this case is similar. The price of chattons was available but not that of chattons with iron frame etc. So, the value of chattons was taken and the value of metal added to determine the value. We find that this method of determination meets the standard laid down in rule 9 of the Valuation Rules. In view of the above, we find that there is no inconsistency in the method of proposed in the show cause notice and upheld in the impugned order. It also needs to be pointed out that the appellant had not contested the proposals in the show cause notice nor presented any contrary evidence regarding valuation before the Commissioner and, therefore, the Commissioner was correct in accepting the valuation method proposed in the show cause notice.

25. The total unbranded goods were valued at Rs. 1,65,49,893/- and a redemption fine of the same value was imposed by the Commissioner in the impugned order. He also confiscated 2880 of reading glasses/sun goggles valued at Rs. 11,42,993/- and allowed them to be redeemed on payment of an redemption fine of an equal amount. In other words, the amount of redemption fine imposed by the Commissioner in the impugned order is equal to the value of the goods itself. In our considered view, this is harsh and the amount of redemption fine must be reduced. Accordingly, we find that the redemption fine in respect of the goods at serial no. 1 to 10 in the Table 9 of the impugned order needs to be reduced to Rs. 16,54,989/- from Rs. 1,65,49,893/- and a redemption fine in respect of serial no. 11 of table 9 needs to be reduced to 1,14,299/- from Rs. 11,42,993/-. The penalty imposed on Sh. Pankaj Gupta, the proprietor of the appellant is Rs. 94,51,763/- under section 112(a) read with Section 114A and section 114AA of the Act. No breakup is given on the amount of penalty imposed under the three sections. We find section 114A provides for penalty but if a penalty is imposed under that section no penalty can be imposed under section 112 also. Section 114AA provides for penalty for a person knowingly or intentionally making, signing, using or causing to be made signed or used any declaration, statement of documents which is false or incorrect in any material particular in the transaction of any business for the purposes of Act. While there is evidence in this case of mis-declaration of the nature of the goods and consequently the need for re-determination of the value, the intention of the appellant or his knowledge has not been clearly brought forth in the order. We, therefore, find that penalty under section 114AA needs

to be set aside. In our considered opinion it would meet the ends of justice if penalty under section 114A and 114AA are set aside and the penalty under section 112(a) is reduced to Rs. 9,00,000/- .

26. In view of the above, we partly allow the appeal and modify the impugned order as follows:

- (a) The absolute confiscation of the counterfeit goods under section 111(d) is upheld.
- (b) The confiscation of the other goods under section 111(l) and 111(m) is upheld but the redemption fine is reduced to Rs. 16,54,989/- in respect of serial no. 1 to 10 and to Rs. 1,14,299/- in respect of serial no. 11 of table 9 of the impugned order.
- (c) The demand of differential customs duty is upheld.
- (d) Penalty under section 112(a) is reduced to Rs. 9,00,000/.
- (e) Penalties under section 114A and 114AA are set aside.

27. The appellant will be entitled to consequential relief, if any.

(Order pronounced on **22.08.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)