

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**Customs Appeal No. 10637 of 2020 - DB**

(Arising out of OIA-KDL-CUSTOM-000-APP-003-005-20-21 dated 28/05/2020 passed by Commissioner of CUSTOMS-KANDLA)

**PRATIK BHANSALI**

B301, Prestige Towers,  
Judges Bungalow Road,  
Bodakdev, Ahmedabad  
Gujarat

.....Appellant

*VERSUS*

**Commissioner of Customs-Kandla**

Custom House,  
Near Balaji Temple,  
Kandla, Gujarat

.....Respondent

**WITH**

**Customs Appeal No. 10644 of 2020 - DB**

(Arising out of OIA-KDL-CUSTOM-000-APP-003-005-20-21 dated 28/05/2020 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

**ZAYD CHAKKIWALA**

45c, Near Shalimar Society,  
Adajan Patia  
Surat, Gujarat

.....Appellant

*VERSUS*

**Commissioner of Customs-Kandla**

Custom House,  
Near Balaji Temple,  
Kandla, Gujarat

.....Respondent

**AND**

**Customs Appeal No. 10670 of 2020 - DB**

(Arising out of OIA-KDL-CUSTOM-000-APP-003-005-20-21 dated 28/05/2020 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

**KAUSTUBHA PAREEK**

1206, Manolita, Arihantadita,  
Gangana Road  
Jodhpur, Rajasthan

.....Appellant

*VERSUS*

**Commissioner of Customs-Kandla**

Custom House,  
Near Balaji Temple,  
Kandla, Gujarat

.....Respondent

**APPEARANCE:**

Shri Vikas Mehta, Consultant & Shri Divyanshu Chaudhary, Advocate for the Appellant

Shri A R Kanani, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. 11778-11780/2024**

DATE OF HEARING: 18.04.2024

DATE OF DECISION: 14.08.2024

**RAMESH NAIR**

These appeals are directed against impugned Order –In – Appeal whereby the penalties imposed by the Adjudicating Authority were upheld as under:-

- (i) Pratik Bhansali- Rs. 10.0 lakh u/s 114 (iii) & Rs. 15.0 lakh u/s 114AA.
- (ii) Zayd Chakkiwala - Rs. 10.0 lakh u/s 114 (iii) & Rs. 15.0 lakh u/s 114AA.
- (iii) Kaustubh Parikh - Rs. 10.0 lakh u/s 114 (iii) & Rs. 15.0 lakh u/s 114AA.

1.2 The brief facts of the case are that Shri Pratik Bhansali worked as President of M/s. A. V. Joshi & Company, a Container Freight Station at Kandla. In April, 2017, he was approached by Shri Alok and Shri Arvind on behalf of exporter firm M/s. Haresh Fashion for export of woven girl fancy frock of MMF and thereafter, he received 02 samples through courier. He sent the same to Shri Balaji Naidu, Custom Broker. Thereafter, on 25.05.2017, the exporter through Custom Broker filed 02 Shipping Bills bearing Nos. 6293441 and 6293292 under duty drawback scheme with Custom House, Kandla for export of goods declared as Woven Girls Fancy Frock- MMF by declaring FOB value as Rs. 1,48,51,872.00 and Rs. 1,03,96,310.40 respectively. The officers carried out market survey and obtained a report based on which market price was ascertained as Rs. 40 to 55 per piece. The report contains no details of source from which this opinion was obtained. Despite this, the declared value was rejected and re-

determined as Rs. 8,09,400/- and Rs. 5,58,600/-. It was also ordered to change classification from CTH 6204 1919 to CTH 6204 4390. The goods entered for export were confiscated and option to redeem the same was given to the exporter. With regard to Shri Pratik Bhansali, penalty of Rs. 10.0 lakh under Section 114 (i) and separate penalty of Rs. 15.0 lakh under Section 114AA of Customs Act,1962 was imposed on the ground that he was assured 40% share of duty drawback and hence, he overvalued the goods

1.3 As regard the appeal of Shri Zayd Chakkiwala, the fact is that Shri Harish Bokade, proprietor of M/s. Harish Fashion has stated in his statement that he was not aware of export procedure, that one Shri Namubhai Tukarm Patil introduced him to Shri Zayd Chakkiwala, that he had taken advice from Zayd Chakkiwala. It has also been observed that Shri Zayd Chakkiwala has admitted that the export documents were got prepared by him, that the value of the goods shown in the export invoices and packing list etc. were fixed by him with actual value of goods is Rs.50 to 65 only per piece. That shipping bills, E-Annex, Check list were prepared by CHA on his instructions, that the export material is overvalued to avail higher amounts of drawback, that he is to be beneficiary of 60% of drawback to be approved.

1.4 The penalty on Shri Kaustubh Parikh was imposed on the ground that he has also admitted in his statement that he has prepared the invoices and details of packing list, that he had provided soft copies of the invoices and packing list prepared by him at his office.

1.5. Being aggrieved by the Order-In-Original, all the three appellants filed appeal before the Commissioner (Appeals) who by upholding the penalties imposed by adjudicating authority, rejected the appeals filed by the appellants. Therefore, the present appeals.

2. Shri Vikas Mehta, Learned Consultant appeared on behalf of the appellants Shri Pratik Bhansali and Shri Zayd Chakkiwala. As regard the appeal of Shri Pratik Bhansali, he submits that Shri Pratik Bhansali is neither exporter nor custom broker. He was merely an employee of Container Freight Station. In any case, he is not an expert in valuation of fabrics. In his statement dated 12.06.2017 he stated that he is not concerned with the value of goods. The appellant is falsely implicated by recording in his subsequent statement dated 14.06.2017 that his earlier statement dated 12.06.2017 was incorrect inasmuch as he had suggested higher value to Custom Broker and was assured 40% duty drawback. In any case, the lower authorities have completely missed the point that export of goods entered for export under duty drawback would invariably be subjected to customs examination and hence, assuming without admitting that the appellant communicated some value to Custom Broker, the same was inconsequential in the face of final opinion by Customs. Moreover, the market enquiry report suggesting lower value does not even name the source (shops) which were approached by the officers. Hence, allegation of over-valuation of goods based on such baseless market enquiry is patently illegal.

2.1 In his later statements that were recorded after the first dated 12.06.2017, the appellant in the statements, was coerced into stating value

of goods as well as assurance of 40 % duty drawback. This is evident from the fact that appellant was deliberately summoned for recording statements on day-to-day basis on 12.06.2017, 13.06.2017, 14.06.2017, 15.06.2017 despite informing the officers about his wedding to be held on 27.06.2017 at Jodhpur (with pre-wedding functions commencing from 22.06.2017) and again summoned for recording statements on 05.07.2017 and 21.07.2017 with constant threat of arrest before and after marriage. Hence, statements of Shri Pratik Bhansali holds no evidentiary value. On the above basis, it is submitted that Shri Pratik Bhansali is not liable to penalty under Section 114 (iii) and 114AA of Customs Act,1962.

2.2 Regarding the appeal of Shri Zayd Chakkiwala, Learned Consultant submits that the detailed submission given by the appellant Shri Zayd Chakkiwala before the Adjudicating Authority, but no finding on the said submission was given, he has merely reproduced the allegation as finding and imposed penalties. Shri Zayd Chakkiwala is not the exporter and has not filed any shipping bill. In his statement dated 05.07.2017, Shri Haresh Bokade, Proprietor of M/s. Haresh Fashion, has stated that he had procured the goods entered for export from Shri Sameerbhai of Surat. He had received the export order from Shri Ashok Mehta. He approached Shri Namu bhai for assistance in completing the export procedures. The exporter has admitted in his statement that he intended to claim higher drawback and he acted as per advice of Shri Namubhai of Surat. The appellant is nowhere named in this statement. However, in further statement dated 21.07.2017, it is recorded that Shri Namubhai was acting on the instructions of appellant. However, the officers never recorded statement of Shri Namubhai (whose details were provided by Shri Haresh Bokade in his statement dated 21.07.2017) nor any questions were asked

to appellant about Shri Namubhai. The statement of appellant that was recorded on 31.07.2017 is placed on page 120 of appeal memo. There is no evidence to show that the appellant procured the export order or negotiated export price. The statement to the extent that appellant was to receive 60% share of duty drawback is incorrect inasmuch as the exporter is on record stating that it was he who intended to avail higher drawback coupled with the fact that he was acting at the behest of Shri Namubhai. Hence, the appellant is falsely implicated in this case. As such, the appellant is not liable to penalty under Section 114 (iii) and 114AA of Customs Act,1962.

2.3 As regard the appeal of Shri Kaustubh Parikh, Shri Divyanshu Chaudhary, Learned Counsel appeared. Learned Counsel submits that the appellant was merely an employee of the company working on the instructions of his seniors on a fixed salary. He was working under the instruction of the exporter. He has no knowledge that the goods shall be liable to confiscation and consequential penalties. It is settled principle of law upheld by this Tribunal that employees cannot be penalized if they do not have any belief that the goods are liable for confiscation. Moreover, they are mere employee of company working on a fixed salary basis and if there is no evidence to show that they have benefitted by the over valuation, the ingredients of Section 114 (iii) of the act are not satisfied to levy a penalty against the appellant. The appellant acted in a bona fide manner and has neither done anything nor has he omitted to do anything which act or omission would rendered the goods liable for confiscation nor he has abated in doing or omitted doing of any act that would attract penal provisions.

2.4 He further submits that ingredients of Section 114 AA of the Act are also not satisfied to levy a penalty against the appellant. It is well-established principle of law that knowledge and intentions are sine qua non for attracting the Sections, there cannot be penalty levied without the presence of mensrea. The appellant herein was merely an employee following the instructions of his seniors, unaware about the nature of the transaction, there can be no mensrea attributed to him. He further submits that the CHA M/s. United Safeway India Pvt Ltd did not review the consignment as is ordinarily expected it during the transaction. The appellant as new employee was unaware of the intricacies and procedures involved in the Customs Clearances. He could not have known of correct valuation or consequences of over valuation. Irregularities committed by CHA M/s. United Safeway India Pvt Ltd of not checking the consignment, cannot be pinned at on an inexperienced employee such as the appellant simply working on the instruction of his employer without any market knowledge to be able to trace malafide intentions in the action of the other parties concern. The appellant is neither the exporter nor the custom broker, he is merely a co-noticee. He further submits that the appellant is merely a co-noticee, it appears that the impugned order penalized the exporter or the custom broker for Rs. 10 lakh while the appellant is penalized for a total amount of Rs. 25 Lakh which is arbitrarily whimsical to penalize the co-noticee more than an amount penalized on the exporter or the custom broker. He further submits that from the overall attempt to export, the appellant has not been benefitted or claimed any benefit, therefore, the penalties were wrongly imposed on him.

3. Shri A R Kanani, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that all the present three appellants are neither the exporter of the goods nor the CHA. The entire case of over valuation stands attributed to exporter and CHA. As far as the allegation of fraudulent claim of duty drawback by over valuing the goods, the beneficiaries are the exporter i.e. M/s. Hareesh Fashion. All the three appellants have no locus-standi to either claim the drawback or receive the drawback. As regard the allegation that Shri Pratik Bhansali and Zayd Chakiwala admitted that they were supposed to get 40% and 60% of drawback does not appear to be correct for the reason that the drawback if at all is received, it is by the exporter of the goods i.e. M/s. Hareesh Fashion in the present case. Moreover, except statements which too not reliable, there is no documentary evidence to show said kickback of 40% to 60% drawback.

4.1 We also find that Shri Pratik Bhansali has clearly denied the allegation in his first statement, thereafter, there was no need to again call him but he was repeatedly summoned and in the subsequent statement he stated that he was supposed to get 40% of the duty drawback. When there are two contradictory statements by one person, those statements cannot be relied upon. Moreover, when the appellant right from their reply to show cause notice denied the allegation, the adjudicating authority was supposed to cross-examine the witnesses, however, no cross-examination has been conducted.



4.2 It is also observed that as regard the allegation of sharing 40% or 60% drawback by Shri Pratik Bhansali and Shri Zayd Chakkiwala , no documentary evidence was brought on record for any past incident that they have received any such sharing of the drawback, therefore, the penalties under Section 114(iii) and 114 AA, in our view was wrongly imposed.

4.3 As regard the appeal of Kaustubh Parikh, We find that he is mere an employee of CHA, therefore, he has performed his duty on the instructions of his senior and it is also a proven fact that he has not been benefited by attempt to claim excess drawback by the exporter. The CHA has already been penalized. In such case, the penalty on the employee cannot be imposed on the charge of wrong availment of drawback by the exporter. Therefore, we are of the view that all the three appellants in the present case are not liable for any penalty.

5. Accordingly, we set aside the penalties and allow the appeals.

*(Pronounced in the open court on 14.08.2024)*

**(RAMESH NAIR)  
MEMBER (JUDICIAL)**

**(RAJU)  
MEMBER (TECHNICAL)**