IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO NO.378 OF 2025

WPO NO.436 OF 2025

SHUVAM CHATTERJEE
VERSUS
UNION OF INDIA AND ANR.

For the petitioner	:	Ms. Micky Chowdhury, Adv. Mr. B. M. Pal, Adv.
For the respondent no.2	:	Mr. Uday Shankar Bhattacharyya, Adv. Mr. Kaustav K. Maiti, Adv.
Heard on	:	24.07.2025
Judgment on	**:**	**24th July, 2025**.

RAJA BASU CHOWDHURY, J (ORAL):

1. The petitioner questioning the action of the adjudicating authority in connection with hearing of a show cause notice issued under Section 124 of the Customs Act, 1962 (hereinafter referred to as "the said Act"), in not providing opportunity to the petitioner to cross-examine certain witnesses, the writ petition being WPO 378/2025 has been filed.
2. Since during pendency of the writ petition, an adjudication order had been passed on 29th /30th May, 2025, the writ petition being WPO 436/2025 has been filed. By consent of the parties, both the writ petitions are taken up together and dealt with by this common order.

3. Though, the petitioner was a custom house agent, however, since his license was under suspension at the relevant point of time, the petitioner had brokered a deal with Mr. Sudipta Bose of M/s. Bose Enterprise, a customs house broker for generating Customs Transit Declaration for transhipment of Nepal bound Container on behalf of Nepalese importer namely M/s. Dolphin Trade and Suppliers Pvt. Ltd. And M/s. Kenal Nepal Pvt. Ltd., both business houses situated at Nepal.
4. On the basis of specific intelligence inputs, the two containers declared as containing goods for transhipment to Nepal were interdicted by the Directorate of Revenue Intelligence, Kolkata (hereinafter referred to as "DRI") and on examination, the containers were found to contain a small amount of maize, (declared item) as cover cargo towards the front of the container and the rest of the container was found to be loaded with betel nuts. The details of the goods in both the containers was found as under:

Container No	***Weight of Maize Seeds (KG) (Cover Cargo)***	***Weight of Betel Nuts (Kg)***
SEKU5783875 (40')	*2800*	*24820*
ZCSU8651307 (40')	*3060*	*24520*

5. After examination, the containers were sealed and the goods were seized under Section 110 of the said Act on the reasonable belief that the goods are liable for confiscation under Section 111 of the said Act. Statements of Customs House Broker and others were obtained including that of the petitioner. Later the petitioner was issued a show cause under Section 124 of the said Act on 4th April, 2024. The petitioner had duly responded to the same. At that stage, the petitioner did not seek for cross-examination of any of the other co-noticees. Subsequently, on 21st October, 2024 the

petitioner by a request letter sought for permission to cross-examine the co-noticees and requested to keep the hearing in abeyance.

6. The petitioner never participated in the proceeding. Following the above, the order-in-original was passed on 29th/30th May, 2025.

7. Ms. Chowdhury, learned Advocate appearing in support of the aforesaid writ petitions has drawn attention of this Court to the relevant documents, inter alia, including the show cause notice, the statement of the petitioner, the response filed by the petitioner to the show cause notice and the order-in-original. She would submit that, the adjudicating officer in the instant case by not providing the petitioner with the opportunity to cross-examine the other two co-noticees had violated the principles of natural justice which has caused immense prejudice to the petitioner. On such ground, the order cannot be sustainable. Independent of the above, she would submit that an entirely unreasoned order has been passed by the adjudicating authority. There is no finding against the petitioner that the petitioner had knowingly been involved in mis-declaration of the goods and consequentially could be held to be an abettor within the meaning of Section 112(a) of the said Act. According to her, the order impugned is perverse and the same should be set aside. In support of her contention that for a case of abetment under Section 112(a) of the said Act to succeed, it is necessary to hold the petitioner of not only being involved but also to demonstrate that the petitioner had knowingly been involved with the mis-declaration, she has placed reliance on a judgment of the Hon'ble High Court at Delhi in the case of ***Rajeev Khatri v. Commissioner of Customs (Export)***, reported in **2023 : DHC : 4428-DB** and an unreported judgment of this Court dated 26th April, 2024 presided

over by the Hon'ble Chief Justice T. S. Sivagnanam, in the case of ***Shri Ajay Kumar Singh v. Commissioner of Customs (Port) & Anr.*** in CUSTA/25/2024. According to her, since the order impugned is perverse and unreasoned, the same cannot be sustained and the matter should be remanded back.

8. Mr. Bhattacharyya, learned Advocate appears for the respondents. He has also taken me through the details of the proceeding. He has demonstrated that the petitioner was actively involved in the process of mediation with Mr. Sudipta Bose of M/s. Bose Enterprise. He has also placed the relevant findings of the adjudicating authority where the involvement of the petitioner has been noted. According to him, no interference is called for.

9. Having heard the learned Advocates appearing for the respective parties, I note that ordinarily challenge to an adjudicating order is not maintainable in a writ petition in exercise of the extra-ordinary writ jurisdiction of this Court. The petitioner, however, seeks to invalidate the order on the ground of procedural irregularity that is, on the failure on the part of the adjucating authority to afford the petitioner with an opportunity to cross-examine the co-noticees and the failure on the part of the adjudicating authority to make out a case within the meaning of Section 112(a) of the said Act against the petitioner. Having regard thereto, I have examined the records and I find that the petitioner had duly responded to the show cause notice by response letter dated 2nd May, 2024. The request for cross-examination was made 5 months thereafter, by a communication in writing dated 21st October, 2024. No reason as to why the petitioner intended to cross-examine the co-noticees had been disclosed. The petitioner had not participated in the proceeding apart from filing the

response and issuing the letters. Having regard thereto, I find that the authorities did not commit any irregularity in refusing the petitioner to cross-examine the co-noticees. In fact, the adjudicating authority vide its order dated 29th/30th May 2024 had categorically noted that the petitioner had made a request for cross-examination without giving any suitable reason as to why he required such cross-examination, and had accordingly refused the same. I also notice that repeated opportunity of personal hearing was afforded to the petitioner. First of such opportunity of personal hearing was afforded on 29th October 2024, second opportunity of personal hearing was afforded on 19th November 2024, third opportunity was afforded on 20th January 2025 and the fourth opportunity of personal hearing was afforded on 19th May 2025. But on none of the aforesaid occasions the petitioner chose to appear. In fact, the petitioner did not participate in the proceeding. Having regard thereto, as is apparent from the above, there has been no failure of justice on the ground of violation of principle of natural justice.

10. On the issue of implicating and holding the petitioner liable under section 112(a) of the said Act, I notice that section 112(a) of the said Act, *inter alia*, proceeds as under:

> ***"112. Penalty for improper importation of goods, etc***.*—Any person—*
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> *(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*
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> *(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping,*

concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111,

shall be liable—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding [* *] the value of the goods or [five] thousand rupees, whichever is the greater;*

[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114-A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of Section 28 and the interest payable thereon under Section 28-AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;]

[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding [* *] the difference between the declared value and the value thereof or [five] thousand rupees, whichever is the greater;*

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding [* *] the value of the goods or [* * *] the difference between the declared value and the value thereof or [five] thousand rupees, whichever is the highest;*

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding [* *] the duty sought to be evaded on such goods or [* * *] the difference between the declared*

*value and the value thereof or [five] thousand rupees, whichever is the highest.]***”**

11. It is clear from the aforesaid provision that there has to be an act of omission in relation to the goods which would render the goods liable for confiscation under section 111 of the said Act or in abetting any act in relation thereto. I find that the Hon'ble Delhi High Court had the occasion to consider the above matter and in paragraph 38 has observed as follows:

> ***"38.*** *In* ***Shree Ram v. State of U.P.: 1975 3 SCC 495****, the Supreme Court held as under:*
>
> > *"6……………Section 107 of the Penal Code which defines abetment provides to the extent material that a person abets the doing of a thing who "Intentionally aids, by any act or illegal omission, the doing of that thing". Explanation 2 to the section says that "whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act". Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third para of Section 107."***"**

12. I also find that such observation is based on the provision of section 3(1) of the General Clauses Act, 1897 which, *inter alia*, provides that the expression 'abet' would have the same meaning as in the Indian Penal Code 1860. Provision of section 107 of the Indian Penal Code had been taken into consideration by the Hon'ble Delhi Court and based thereon the aforesaid observation had been made. The judgment delivered in the case of ***Shree Ram v. State of U. P.***, reported in **(1975) 3 SCC 495** and the judgment delivered in the case of ***Amritlakshmi Machine Works v. The Commissioner of Customs (Import), Mumbai***, reported in **2016 (335) E.L.T. 225 (Bom.)** were also taken note of, and proceeding on such premise it had held that mere facilitation without knowledge would not amount to abetting an offence. Admittedly, in this case I find that although, diverse materials have been considered, there appears to be no finding by the adjudicating officer so as to implicate the petitioner of having involved with the notice and knowledge that the goods in question had been mis-declared. It is true that the adjudicating authority had returned the finding that the petitioner played an instrumental role in abetting smuggling. However, mere use of the word abetment or abetting smuggling, in my view, would not suffice unless a clear finding implicating the petitioner to have committed the act of omission or commission with the knowledge of the goods being mis-declared is rendered. Unless the petitioner is implicated as having knowledge of the misdeclaration, the above section cannot apply.

13. Having regard thereto, I am of the view that the above direction of holding the petitioner liable under section 112(a) of the said Act is perverse and is not sustainable. Accordingly the order to that extent is interfered with.

However, noting the conduct of the petitioner and the prayer made by Ms. Chowdhury, learned advocate representing the petitioner, I remand the matter back to the adjudicating authority for a decision to be made by the adjudicating authority afresh in so far as the petitioner is concerned on the materials already available on record. The consequential penalty levied on the petitioner stands set aside. The adjudicating authority is directed to hear out the petitioner afresh and pass an appropriate order in accordance with law.

14. The writ petition is accordingly disposed of.

15. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(RAJA BASU CHOWDHURY, J.)

AKG/R. Bose