$~66, 67 and 88

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 17th July, 2025

\+ **W.P.(C) 9858/2025**

RAJESH GADIYA .....Petitioner

Through: Mr. Prem Ranjan Kumar, Adv. [M: 9310143231].

versus

THE ADDITIONAL COMMISSIONER OF CUSTOMS .....Respondent

Through: Mr. Harpreet Singh, SSC

67 WITH

\+ **W.P.(C) 9899/2025**

RAJESH GADIYA .....Petitioner

Through: Mr. Prem Ranjan Kumar, Adv. [M: 9310143231].

versus

THE ADDITIONAL COMMISSIONER OF CUSTOMS .....Respondent

Through: Mr. Harpreet Singh, SSC.

88 WITH

\+ **W.P.(C) 10028/2025 & CM APPL. 41721/2025**

SURESH MALIK .....Petitioner

Through: Mr. Ruchik Harikant, Adv. (M: 7379136504).

versus

THE ADDITIONAL COMMISSIONER OF CUSTOMS .....Respondent

Through: Mr. Harpreet Singh, SSC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. These are three writ petitions filed by the Petitioners- Mr. Rajesh Gadiya [***W.P.(C) 9858/2025*** and ***W.P.(C) 9899/2025***] and Mr. Suresh Malik [***W.P.(C) 10028/2025***]. Mr. Rajesh Gadiya is engaged in the import and trading of scrap metal of various kinds and has been importing the same *via* his firms namely M/s Surbhi Ferro Impex, M/s Marvel Metals Pvt. Ltd. and M/s Sunglow Impex. Mr. Suresh Malik is an importer and the Proprietor of the firm M/s Shree Sai Overseas bearing Importer Exporter Code (hereinafter, '*IEC*') No. BFUPM0006A.

3. The Petitioners have challenged the Order-in-Original dated 25th March, 2025 passed by the Office of the Commissioner of Customs (hereinafter, '*impugned order*') by which substantial amount of penalties have been imposed on the Petitioners in the following terms:

> *"71. In view of the above, I pass the following order:*
>
> *Order*
>
> *(i) I order for **absolute confiscation of 126,22,000 cigarette-sticks** of various brands of foreign origin, smuggled in container no. BAXU50515958 (covered under bill of entry no. 2512888 dated 27.01.2021) and in container no. BAXU5041026 (covered under bill of lading no. BAXSSS084458 dated 27.01.2021), having market value or Rs. 13,57,00,000/ (Rupees Thirteen Lac Fifty Seven Thousand only), under Section 111(d) of the Customs Act, 1962 read with section 3 of the Foreign Trade (Development and Regulation) Act, 1992;*
>
> *(ii) I order for **absolute confiscation of the 36 old & used photocopier machines** smuggled in container no. BAXU5015958 (covered under bill of entry no. 2512888 dated 27.01.2021) and in container no. BAXU5041026 (covered under bill of lading no. BAXSSS084458 dated 27.01.2021), having FOB value of Rs. 42,09,000/-(Rupees Forty Two Lac Nine Thousand only), under Section 111(d) of the Customs Act, 1962 read with section 3 of the Foreign Trade (Development and Regulation) Act, 1992;*
>
> *(iii) I order for **absolute confiscation of 11550 kg aluminium***

scrap talk *imported in container no. BAXU5015958 (covered under bill of entry no. 2512888 dated 27.01.2021) and in container no. BAXU5041026 (covered under bill of lading no. BAXSSS084458 dated 27.01.2021), having re-determined assessable value of Rs. 31,05,228/-(Rupees Thirty One Lac Five Thousand Two Hundred and Twenty Eight only), which was used for concealment of old & used photocopier machines and cigarettes, under Section 119 of the Customs Act, 1962 for the reasons as discussed above;*
(iv) l reject the proposal for demand of the duty amounting to Rs. 6,59,706/- (BCD Rs. 77,631/- + SCD Rs. 7,763/- + IGST Rs. 5,74,312/-) for 11550 kg aluminium scrap talk imported in container no. BAXU5015958 (covered under bill of entry no. 2512888 dated 27.01.2021) and in container no. BAXU5041026 (covered under bill of lading no. BAXSSS084458 dated 27.01.2021) from the importer u/s 17 of the Customs Act, 1962;
(v) I impose a penalty ***of Rs. 14,00,00,000/- (Rupees Fourteen Crore only)*** *under Section 112(a)(i) of the Customs Act, 1962 on the importer i.e. M/ s Shree Sai Overseas;*
vi) I impose a penalty of ***Rs. 28,00,00,000/- (Rupees Twenty Eight crore only)*** *under Section 114AA of Customs Act, 1962 on Sh. Suresh Malik, Proprietor M/s Shree Sai Overseas;*
(vii) I refrain from imposing penalty under Section 112(b), 114A and 114AA of the Customs Act, 1962 on M/s Shree Sai Overseas as discussed above;
(viii) I refrain from imposing penalty under Section 112 and 114A of the Customs Act; 1962 on Sh. Suresh Malik, Proprietor M/s Shree Sai Overseas as discussed above;
(ix) l impose a penalty of ***Rs. 15,00,000/- (Rupees Fifteen Lac only)*** *under Section 112(a)(i) of the Customs Act, 1962 on M/s Lohia Travel & Cargo;*
(x) 1 impose a penally of ***Rs. 15,00,000/- (Rupees Fifteen Lac only)*** *under section 114AA of the Customs Act, 1962 on M/s Lohia Travel & Cargo;*
(xi) I impose a penalty of ***Rs. 10,00,000/- (Rupees Ten Lac only)*** *under Section 112(a)(i) of the Customs Act, 1962 on Shri Dinesh Kumar Sharma, G-card of M/s Lohia Travel &, Cargo;*
(xii) I impose a penalty of ***Rs. 10,00,000/- (Rupees Ten Lac only)***

under Section 114AA of the Customs Act, 1962 on Shri Dinesh Kumar Sharma, G-card of M/s Lohia Travel & Cargo
(xiii) I impose a penalty of ***Rs. 7,00,00,000/- (Rupees Seven Crore only)*** *under Section 112(a)(i) of the Customs Act, 1962 on Shri Amit Kumar, G-card of M/ s Lohia Travel&, Cargo;*
(xiv) l impose a penalty of ***Rs. 7,00,00,000/- (Rupees Seven Crore only)*** *under Section 114AA of the Customs Act, 1962 on Shri Amit Kumar, G-card of M/s Lohia Travel &, Cargo;*
(xv) I impose a penalty ***Rs. 14,00,00,000/- (Rupees Fourteen Crore only)*** *under Section 112(a)(i) of the Customs Act, 1962 on Shri Raj Gadiya;*
(xvi) I impose a penalty of ***Rs. 28,00,00,000/- (Rupees TwentyEight Crore only)*** *under Section 11 4AA of the Customs Act, 1962 on Shri Rajesh Gadiya;*
(xvii) I impose a penalty ***Rs. 25,00,000/- (Rupees Twenty Five Lac only)*** *under Section 112(a)(i) of the Customs Act, 1962 on M/s Star Sales;*
(xviii)I impose a penalty ***Rs. 25,00,000/- (Rupees Twenty Five Lac only)*** *under Section 114AA of the Customs Act, 1962 on M/s Star Sales;*
(xix) I refrain from from imposing penalty under Section 112b & 114A of the Customs Act, 1962 on each of the Noticee i.e. M/s Lohia Travel & Cargo, Shri Dincsh Kumar Sharma, G-card. of M/s Lohia Travel & Cargo, Shri Amit Kumar, G-card of M/s Lohia Travel &, Cargo, Shri Rajesh Gadiya and M/s Star Sales as discussed above;
(xx) I refrain from imposing any penalty under Section 112, 114A and 114AA of the Customs Act on M/s Bay Lines as discussed above;
(xxi) I propose prosecution against Shri Suresh Malik, Shri Rajesh Gadiya and Shri Amit Kumar as they have committed offences punishable under Section 132 & 135 of Customs Act, 1962."

4. A Show Cause Notice (hereinafter '*SCN*') was issued to the Petitioners on 4th August, 2021 upon receipt of intelligence to the effect that smuggling of cigarettes and photocopier machines of foreign origin was being carried out under the guise of aluminium scrap, from foreign countries.

5. The Customs Department (hereinafter, '*Department*') had investigated into the matter and found that the Importer- M/s Shree Sai Overseas filed a Bill of Entry bearing No.2512888 dated 27th January, 2021 through its Customs House Agent (hereinafter, '*CHA*')- M/s Lohia Travel & Cargo through the G Card holder- Mr. Amit Kumar having G Card No. 27/2018.

6. Upon inspection of the said Bill of Entry, it was revealed that though it was declared as *'Aluminium Scrap Talk'* as per Institute of Scrap Recycling Industries (hereinafter '*ISRI*'), the Aluminium Scrap was merely placed in the front of the container. Upon destuffing of the same, old photocopier machines from brands such as Canon and Xerox were found placed in the container. Behind the said photocopier machines various gunny bags were also found and the said gunny bags reveal that there were imported cigarettes of the brand namely *'Esse Lights'*, *'Esse Gold'* and *'Pine'*. There were a total of 60 lakhs cigarette sticks.

7. Mr. Suresh Malik, the importer was questioned by the Department and in his statement dated 9th February, 2021, Mr. Malik stated that his friend Mr. Rajiv Sethi had informed him about the scrap import business and had lured him to lend his name as the Importer. The crux of the said statement of Mr. Suresh Malik is set out below:

> *"4. Statement dated 09.02.2021 (RUD-4) of Suresh Malik, S/o Shri Om Prakash Malik, R/o 867/29, Gali No. 3, Vikas Nagar, Kakroi Road, Sonepat Haryana-131001, the Proprietor of M/s Shree Sai Overseas was recorded under section 108 of Customs Act, 1962, wherein he interalia stated that:*
>
> - ***One of his friend namely Shri Rajiv Sethi informed him about scrap import business and advised him to form a firm. Thereafter, he obtained GSTIN and IEC four months before with the help of his Chartered Accountant.***
> - *His firm Shree Sai Overseas is located at Ground*

Signature Not Verified
Signed By:NAMITA DHYANI
Signing Date:22.07.2025 12:27:02

Floor, Plot No. 150, Pocket-I, Sector-4, Bawana, New Delhi-110039 and its godown is also at the same address. The GSTIN of Shree Sai Overseas is 07BFUPM006A1ZW and IEC is BFUPM0006A.

- ***<u>Shri Rajiv Sethi told him that they will import a total of 5 containers out of which the first 3 containers will contain only scrap whereas in the 4th and 5th container they will import cigarettes though the import of same is not permissible. Shri Rajiv Sethi promised to pay ₹ 2 Lakh per container to him and he agreed for the same in greed of money.</u>***
- *Shri Rajiv Sethi used to book scrap from Dubai. He used to talk to some Ahmad Zahid on Mobile No. 00971528581042 at Dubai for the same. He had also talked to Ahmad Zahid who had informed that scrap will be sent in the first 4 containers and the 5th container will be containing Cigarettes.*
- *Shri Rajiv Sethi expired on 7th January, 2021 due to Heart Attack.*
- *The container No. BAXU5015958 under examination by SIIB is the 4th import by his firm. Prior to this, he had imported 3 containers. Shri Rajiv Sethi had told that a total of 5 Containers will be imported by them. As regards the whereabouts of the 5th container, he said that he has no information about the same and he could not comment whether the same has shipped from Dubai or not.*
- *As regards the payment in respect of the previous 3 imports, the importer stated that the payment has been made by Shri Rajiv Sethi. Further, he does not know about the payment made in respect of instant container No. BAXU5015958 and the payment might have been made by Shri Rajiv Sethi.*
- *The importer also provided the Bank statement in respect of his Current A/c No. 50200052476249 and informed that the account was being operated by Shri Rajiv Sethi prior to his death. Since the death of Shri Rajiv Sethi, he has been operating the Bank Account himself.*
- *All the goods imported vide previous 3 Bills of Entry*

has been sold to Mi/ Treco Wire India Pvt. Ltd. and an amount of ₹23,25,000/- has been received in his Bank account on this behalf.

- *On being asked about the payment on 23,25,000/-, 9,50,000/- and 4,30,000/- made after 07.01.2021 (death date of Sh. Rajeev Sethi), he stated that he has nothing remember about these transactions but admitted that he has himself transacted the said amount as he himself operate his bank account.*
- *He agreed with the Panchnama proceedings in respect of examination of goods imported vide Bill of Entry No.2512888 dated 27.01.2021. He also stated that he has wrongly imported foreign brand cigarettes and old & used Photocopier machines which is not permissible. He took the ownership of the imported goods and stated that he is ready to face punishment for his wrongdoing. He also stated that due to greed for money, he imported the subject goods.*
- *Regarding filing of Bills of Entry, he stated that he had given the relevant documents to Shri Amit Kumar, working in CHA firm M/s Lohia Travel & Cargo at his office for filing the Bill of Entry. Shri Rajiv Sethi had introduced him to Shri Amit Kumar. He could not inform as to where he got the Bill of Lading from in respect of Bill of Entry No.2512888 dated 27.01.2021."*

8. Thereafter, another container was pending for arrival. After the arrival of the said container, the same was inspected by the Customs Department, and in the said container also cigarettes were found, though the consignment was described as *'Aluminium Scrap Talk'*. The said container was found to contain approximately 65 lakh cigarette sticks of brands such as *'Benson and Hedges Blue Gold'*, *'Pine'*, *'Davidoff White Slim'*, *'Dunhill'*, and *'Gold Flake Honey Dew'*.

9. This led to issuance of the SCN. Post the SCN being issued, some of the parties appeared before the Adjudicating Authority in the matter. The

statement of Mr. Rajesh Gadiya was also recorded. The G Card holder as also the CHA agent gave their statements. The facts revealed during search and seizure as also the various statements given, led the Adjudicating Authority to arrive at the conclusion that all the said parties were acting in connivance with each other.

10. The findings of the Adjudicating Authority were that the Petitioners were involved in smuggling of foreign origin cigarettes and old and used photocopier machines. According to the Adjudicating Authority, the importer *i.e.*, Mr. Suresh Malik being the IEC holder would have to be held responsible. Moreover, Mr. Rajesh Gadiya was the person who had introduced the parties to each other and had also enabled the filing of Bills of Entry. Mr. Rajesh Gadiya has admitted these facts in his own statement.

11. The most incriminating factor against Mr. Rajesh Gadiya was the fact that he destroyed his mobile phones and deleted all the emails at his email address being marvelmetals@yahoo.com. These facts are noted by the Adjudicating Authority in Paragraph 44(o) of the impugned order, which reads as under:

> *"(o) **Shri Rajesh Gadiya, Director of M/s Marvel Metals Pvt. Ltd. admitted in his statement that when he got to know that alert has been inserted against the containers of M/s Shree Sai Overseas, he deleted all the email related to Shree Sai Overseas from his email id: marvelmetals@yahoo.com and he damaged his mobile phone whereby mobile nos.9811855121 and 9810277931 were operated**, which also clearly indicates that Shri Rajesh Gadiya was well aware about the smuggling of Cigarettes and old & used photocopiers in the guise of Aluminium Scrap Talk and he knew that the investigation team may inquire/investigate to him in this regard, hence he destroyed the material evidence which might have been useful in the case and also committed offence u/s 201 of the Indian Penal Code (IPC)."*

12. The Adjudicating Authority also records that various payments were made by Mr. Suresh Malik in the following terms:

> *"44(e) Statement dated 05.04.2021 of Suresh Malik was recorded after getting bail from Hon'ble Court, wherein he altered his earlier statement that he was introduced to Mr. Amit Kumar by Rajiv Sethi, and* ***stated that in fact he was introduced to Mr. Amit Kumar by Mr. Rajesh Gadiya; and he also confirmed that 6,40,000/-, 4,30,000/-, 9,50,000/- and 1,50,000/- were transferred to his firm Shree Sai Overseas account on 15.12.2020, 18.01.2021, 27.01.2021 and 29.01.2021 respectively and after receiving the money, an amount of ₹5,00,000/- and ₹4,30,000/- transferred to M/s Amit Clearing Agency (CHA) to discharged customs duty etc. and some payments he made to settle the account of shipping line charges M/s Winwin maritime limited on 15.12.2020 & 19.01.2021; he also confirmed that M/s Star Sales had no knowledge and concerned with the import of foreign brand cigarettes & old and used Photocopier machines imported by him. It is clear he is admitting in his every statement the illicit import was made by him and Shri Rajeev Sethi.*** *However, during investigation there is no evidence against deceased Shri Rajeev Sethi. Suresh Malik took the name of Shri Rajeev Sethi only for sharing of his wrong doings and tried to distract the investigation."*

13. The findings recorded by the Adjudicating Authority does reveal a conspiracy for smuggling of cigarettes and photocopier machines. Such acts are not innocent but are in fact deliberate and conscious acts meant to dupe the Exchequer. The Adjudicating Authority also records that despite repeated opportunities, the importer *i.e.*, Mr. Suresh Malik did not appear at all. Paragraph 55 of the order in this regard is set out below:

> *"55. The Noticees were granted opportunity for personal hearing on 09.02.2024, 23.02.2024, 08.03.2024, 11.04.2024, 16.04.2024, 22.07.2024, 24.09.2024 and 20.12.2024 vide letters dated 19.01.2024, 13.02.2024, 23.02.2024, 26.03.2024,*

19.04.2024, 05.07.2024, 12.09.2024 and 06.12.2024. In response to said PH notices, following Noticees or their authorized representatives appeared for personal hearing:-

(i) Shri Farhad Dholoo, Director, Freight Connection India Pvt. Ltd. appeared for personal hearing on 23.02.2024 before the then Adjudicating Authority. During PH, he reiterated the submissions made vide their reply dated 31.08.2021. He further stated that being shipping line agent, they had not done anything wrong and they carried the goods as handed over by foreign supplier.

(ii) Shri Vivek Kumar, Advocate appeared for personal hearing on 08.03.2024 on behalf of Shri Rajesh Gadiya and Shri Amit Kumar before the then Adjudicating Authority. During PH, he submitted that his he/his clients have not received RUDs in the matter and requested to provide the same for filing the defense reply. As requested, the RUDs in r/o impugned SCN were emailed to Shri Vivek Kumar on his email on 08.03.2024 and the receipt of the same was acknowledged by him through email dated 08.03.2024.

(iii) Shri Vivek Kumar, Advocate appeared for personal hearing on 22.07.2024 on behalf of Shri Rajesh Gadiya and Shri Amit Kumar. During PH, he requested for cross-examination of Mr. Dinesh Kumar Sharma, M/s Lohia Travel and Cargo. (Customs Broker) and M/s Star Sales."

14. Mr. Prem Ranjan, ld. Counsel appearing for Mr. Rajesh Gadiya submits that the said Petitioner does not have the financial means to file an appeal due to the mandatory requirement of pre-deposit. Ld. Counsel further submits that in terms of Section 138B of the Customs Act, 1962, the statement of the G Card holder-Mr. Amit Kumar, the importer- Mr. Suresh Malik, etc. could not have been recorded without giving a right to cross-examination. Since the Adjudicating Authority has relied upon the said statements, the same is liable to be set aside and the Petitioner ought to be provided an opportunity to cross-examine them.

15. In support of his submissions, ld. Counsel for Mr. Rajesh Gadiya relies upon decision in ***J&K Cigarettes Ltd. vs. Collector of Central Excise [2009 (242) ELT 189 (Del.)]*** and various other judgments which have followed the said judgment.

16. Mr. Richik Adhikari, ld. Counsel appearing on behalf of Mr. Suresh Malik submits that Mr. Rajiv Sethi has passed away in the year 2021. Ld. Counsel further submits that Mr. Suresh Malik merely earned Rs.2 lakh for importing each consignment upon being lured by Mr. Rajiv Sethi. Ld. Counsel submits that Mr. Suresh Malik did not have any role in the actual supplies itself. Mr. Suresh Malik was introduced by Mr. Rajesh Gadiya to the suppliers. Under these circumstances, ld. Counsel submits that the main role was of Mr. Rajiv Sethi and not the Petitioner.

17. Heard. The present case reveals the manner in which various parties had colluded with each other in order to indulge in smuggling, which if true, is completely contrary to law. The role of each of these parties is something which the Adjudicating Authority has gone into. As far as Mr. Rajesh Gadiya is concerned, even if the statements made by the CHA or the importer *i.e.*, Mr. Suresh Malik are ignored, the admitted position is that Mr. Rajesh Gadiya himself admits that he had introduced the supplier to the importer and had enabled the filing of documentation.

18. The facts recorded by the Adjudicating Authority also reveal a much more active role played by Mr. Rajesh Gadiya in terms of sending and forwarding e-mails, making calls, enabling documentation, etc. The most incriminating circumstance which in such an investigation ought to go completely against Mr. Rajesh Gadiya is the destruction of all the e-mails and the destruction of the mobile phones, which he admits. The e-mails and the

mobile phones would have revealed as to what exactly was the role Mr. Rajesh Gadiya played. In his own statement, Mr. Rajesh Gadiya has admitted as under:

> *"69.5 **Penalty on Shri Rajesh Gadiya:***
> *69.5.1 **I find that Shri Rajesh Gadiya deleted emails related to M/s Shree Sai Overseas, M/s Triple A Destinations and M/s Scottish Metals from his email account and destroyed his mobile phone whereby mobile nos. 9811855121 and 9810277931 were operated. From the same it is construed that he was aware of the smuggling activities involving old & used photocopier machines and cigarettes disguised as scrap aluminum and tried to destroy evidence.** Further, vide his statement dated 04.03.2021 Rajesh Gadiya stated that documents of M/s Shree Sai Overseas provided to CHA Shri Amit Kumar from his email id marvelmetals@yahoo.com were used to given by Suresh Malik owner of M/s Shree Sai Overseas at the Godown of his firm Marvel Metals Pvt. Ltd., Shahabad Daulatpur and his staff Manish Trivedi used to email the said documents to Amit Kumar CHA, similarly Suresh Malik came to his office regarding customs clearance documents related to container No BAXU5015958 (under Bill of Entry No. 2512888 dated 27.01.2021) which his office staff emailed to Amit Kumar to file Bill of Entry in customs department through his email id. However, in his statement dated 23.03.2021 he overturned from his earlier statement and admitted that the import documents of M/s Shree Sai Overseas used to come to him from the suppliers of the goods imported by M/s Shree Sai Overseas. I find that Rajesh Gadiya also engaged in import of Metal Scrap business since last 15 years and he introduced both the importers i.e. M/s Shree Sai Overseas and M/s Triple A Destination, to Amit Kumar CHA. Further, these details corroborate the facts that he was well aware about the import consignments of Shree Sai Overseas and appears to be equally involved in importation of import of all goods including illicit import of cigarettes and old & used photocopier machines.*
> ***69.5.2 I further find that Shri Rajesh Gadiya in his statement dated 04.03.2021 admitted that he had helped Shree Sai Overseas in contacting various exporters for supplying scrap and he also***

Signature Not Verified
Signed By:NAMITA DHYANI
Signing Date:22.07.2025 12:27:02

helped M/s Shree Sai Overseas in scrap payment as and when they required. He arranged metal scrap for container no. BAXU5015958 and BAXU5041026 imported by Shree Sai Overseas from SAM GLOBAL FZE LLC from Dubai for Shree Sai Overseas and the original documents from the suppliers were also received at his residence through courier. *Also the documents related to the import of Shree Sai Overseas used to come to his residence by courier and he had also arranged for scrap importers from Dubai for M/s Shree Sai Overseas, which clearly indicates that Shri Rajesh Gadiya was actively involved in importation of goods from Dubai and assisted Suresh Malik in each & every step. Shri Rajesh Gadiya stated that he arranged scrap from the overseas supplier SAM GLOBAL FZE LLC, however as discussed above the actual supplier in the documents of Dubai Customs was Al Garhoud General Trading LLC, therefore, it appears that he also assisted Suresh Malik in false declaration of exporter as SAM GLOBAL FZE LLC and fabricating the invoice submitted for container no. BAXU5015958.*

69.5.3 *Further, it is observed that a similar case on the same modus operandi was also booked by SIIB, ICD Patparganj & other ICDs against M/s Triple A Destinations on 06.02.2021 at ICD Jhattipur, Haryana wherein during examination a large quantity of foreign brand cigarettes were found in the guise of Aluminium Scrap.* ***Shri Rajesh Gadiya, Proprietor of M/s Marvel Metals was emerged common person in the said case also and Shri Rajesh Gadiya in his statement has admitted that he also used to assist in importation Shri Zahid Ali, proprietor of M/s Triple A Destinations.*** *Also, another case of same modus operandi wherein Cigarettes have been imported by M/s Scottish Metals in guise of Aluminium Scrap has been booked by DRI, Delhi Zonal Unit.* ***Shri Rajesh Gadiya in his statement dated 23.03.2021 has admitted that the original documents of M/s Shree Sai Overseas, M/s Triple A Destinations and M/s Scottish Metals used to come to him from their suppliers and he/his staff used to send the said documents to Shri Amit Kumar, G-Card Holder of CHA M/s Lohia Travel & Cargo through his firm email ID. From these facts, it is evident that Shri Rajesh Gadiya is the mastermind in importation of illicit importation of Cigarettes and old & used***

<u>photocopier machines as he is the only person who is involved in importation of goods by all these firms.</u> *Shri Rajesh Gadiya is the key person who planned to illegally import cigarettes and old & used photocopier machines with the help of different IEC holders i.e. M/s Shree Sai Overseas, M/s Triple A Destinations and M/s Scottish Metals and Suresh Malik agreed to his plan and formed a Company in the name of M/s Shree Sai Overseas and illegally imported Cigarettes and old & used photocopier machines at ICD Sonepat.*

69.5.4 ***<u>In view of above, it is quite evident that Shri Rajesh Gadiya intentionally and knowingly, indulged in smuggling/dealing with seized 36 old and used photocopier machines, 1,26,22,000/- Cigarette-sticks of foreign origin and 11550 kg. Aluminium scrap (used for concealment).</u>*** *As the goods i.e. old and used photocopier machines are restricted goods and Cigarette-sticks are prohibited goods and also not declared in the impugned Bill of Entry & Bill of Lading are liable for confiscation under Section 111(d) of the Customs Act, 1962, Shri Rajesh Gadiya is liable for penalty under Section 112(a)(i) of the Customs Act, 1962. As penalty under Section 112(a) of the Customs Act, 1962 is imposed, I hold that Penalty under Section 112(b)& 114A of the Customs Act, 1962 is not imposable on Shri Rajesh Gadiya.*

69.5.5. *Further, Section 114 AA of the Customs Act, 1962 provides that "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 purpose of this Act." shall be liable for penalty.* ***<u>As held in preceding paras, Sh. Rajesh Gadiya knowingly and intentionally in connivance with Sh. Shri Suresh Malik involves in the smuggling of impugned goods through M/s Shree Sai Overseas. Therefore, I hold that Sh. Rajesh Gadiya is liable for penalty under Section 114AA of the Customs Act, 1962."</u>***

19. The above conclusions that the Adjudicating Authority has arrived at is mostly based on statements of Mr. Rajesh Gadiya himself and the documentary evidence. While there can be no doubt that statements would be

relevant, subject to the right to cross examination being given, in the very judgment which is cited by Mr. Prem Ranjan, ld. Counsel for Mr. Rajesh Gadiya *i.e.*, ***J&K Cigarettes Ltd. (Supra)***, the Court observes as under:

> *"24. We may also point out at this stage itself that the power of the Parliament to make such a provision is not in question. It is also conceded by the learned senior counsel appearing for the petitioners in this case that such a provision could be incorporated in the statute, which is pari materia of Section 32 of the Evidence Act viz., to rely upon statements of certain persons even when they have not been produced for cross-examination, under the given circumstances.* ***Thus, though it cannot be denied that the right of cross-examination, under judicial proceeding is a valuable right given to the accused/notice, as these proceedings may have adverse consequences to the accused, at the same time under certain circumstances, this right of cross-examination can be taken away.*** *Of course, the circumstances have to be exceptional."*

20. This issue has been considered in the context of Customs Authorities in the case of ***Sushil Aggarwal v. Principal Commissioner of Customs (2025:DHC:698-DB),*** where this Court has held as under:

> *"15. Accordingly, this Court is of the opinion that in order to ensure that there is compliance of Section 138(B) of the Act,* ***though the same cannot be claimed as an unfettered right in all cases, in the facts of the present*** *case, both Mr. Sushil Aggarwal and Mr. Aidasani are afforded an opportunity to cross examine Mr. Bhalla."*

21. The Supreme Court in ***M/s Telestar Travels Pvt. Ltd. v. Special Director of Enforcement [2013 (9) SCC 549]*** has clearly laid down the position that whenever a party demands the right to cross examination, the authority concerned has to look at what is the prejudice that could be caused to the said party if the cross examination is not permitted. This is clear from a reading of the judgment in ***M/s Telestar Travels Pvt. Ltd. (Supra)***, where it

is held as under:

> *"23. That brings us to the third limb of the attack mounted by the appellants against the impugned orders. It was argued by Mr Divan that while holding that Bountiful Ltd. was a paper company and was being controlled and operated from India by the appellants through Shri Sirish Shah, the adjudicating authority had relied upon the statements of Miss Anita Chotrani and Mr Deepak Raut, and a communication received from the Indian High Commission in London. These statements and the report were, according to Mr Divan, inadmissible in evidence as the appellant's request for an opportunity to crossexamine these witnesses had been unfairly declined, thereby violating the principles of natural justice that must be complied with no matter the strict rules of the Evidence Act had been excluded from its application. … …*
>
> *24. Mr Malhotra, on the other hand, argued that the right of cross-examination was available to a party under the Evidence Act which had no application to the adjudication proceedings under FERA. … …He also placed reliance upon a decision of this Court in Surjeet Singh Chhabra v. Union of India (1997(1) SCC 508=1997 SCC (Cri) 272) to argue that cross-examination was unnecessary in certain circumstances such as the one at hand where all material facts were admitted by the appellants in their statements before the authority concerned.*
>
> *25. There is, in our opinion, no merit even in that submission of the learned counsel. It is evident from Rule 3 of the Adjudication Rules framed under Section 79 of FERA that the rules of procedure do not apply to adjudication proceedings. That does not, however, mean that in a given situation, cross-examination may not be permitted to test the veracity of a deposition sought to be issued against a party against whom action is proposed to be taken. It is only when a deposition goes through the fire of cross-examination that a court or statutory authority may be able to determine and assess its probative value. Using a deposition that is not so tested, may therefore amount to using evidence, which the party concerned has had no opportunity to question. Such refusal may in turn amount to violation of the rule of a fair hearing and opportunity implicit in any adjudicatory process, affecting the*

right of the citizen. ***The question, however, is whether failure to permit the party to cross examine has resulted in any prejudice so as to call for reversal of the orders and a de novo enquiry into the matter. The answer to that question would depend upon the facts and circumstances of each case.”***

22. In the present case, the Adjudicating Authority has ruled on the issue of cross examination in the following terms:

> *“70. I further find that Shri Vivek Kumar, Advocate appeared for personal hearing on 22.07.2024 on behalf of Shri Rajesh Gadiya and Shri Amit Kumar. During personal hearing, he requested for cross-examination of Mr. Dinesh Kumar Sharma, M/s Lohia Travel and Cargo (Customs Broker) and M/s Star Sales. In this regard I find that the said request for cross-examination of various co-noticees has been made without specifying any cogent reason whatsoever as to how it is going to help his case, when the issue of fraudulent activities as committed for the said attempted export of the contraband goods, is proved. Therefore, prima facie it appeared to me that these efforts are only to subvert the adjudication process. I also find that the SIIB has developed the case not only on the basis of statements but their main emphasis was on corroborative documentary evidences gathered during investigation and other evidences strengthens the allegation as made from the evidences cited. Also, as the noticee has requested for cross-examination of co-noticees. This is not possible as co-noticee cannot be directed to be part of the proceedings that may incriminate him. The same view is also held by High Court in the case of N.S. Mahesh vs. Commissioner of Customs, Cochin reported in 2016 (331) ELT 402 (Ker.) wherein it is held as under:*
>
> > *“ii Cross examination of co-Noticee Sri Reji Cherian:*
> > *Apart from a broad statement that Noticee No. 2 was seeking cross examination of Shri Reji Cherian for rebutting the allegations of abetting evasion of duty by furnishing false and fabricated incorrect materials, no specific reasons or points have been attributed for seeking his cross-examination. Further Noticee No.2 has not given any specific fact that would emerge in his favour upon the cross-examination of Sri Reji Cherian.*

Signature Not Verified
Signed By:NAMITA DHYANI
Signing Date:22.07.2025 12:27:02

Further as Sri Reji Cherian is a co-Noticee, this authority cannot direct him to be present for proceedings that may cause him to incriminate himself and therefore the request for cross-examination of Sri Reji Cherian cannot be acceded to.

2. On a perusal of Ext.P5 order, and the reasons given by the respondent to deny the request of the petitioner for cross-examination, I do not find any illegality in the said order that would warrant an interference with the said order in these proceedings under Article 226 of the Constitution of India. The writ petition, in its challenge against Ext.PS order, the ref ore fails, and is accordingly dismissed.

*a. **Cross-examination is not a matter of right and should be claimed by stating valid reasons which the Sh. Rajesh Gadiya and Amit Kumar in the instant case has failed to do so.** This is held by the CESTAT in the case of Kitti Steels ltd. Vs. Commissioner of Cus&C.Ex., Hyderabad-III reported in 2011 (266) ELT 375 (Tri. - Bang.) in which the following was stated:*

"7.1 The first issue before us is whether natural justice was denied to the appellants by the adjudicating authority. The records of this case would speak volumes about the non-cooperation of the party with the adjudicating authority. As we have already noted, no reply to the show-cause notice was filed by KSL despite numerous opportunities having been given and even despite specific directive of the Hon'ble High Court. The Commissioner's repeated offers of personal hearing were also not availed of. The plea of KSL for permission to cross-examining witnesses was duly considered by the Commissioner. KSL wanted to cross examine "all those persons whose statements were relied upon in the show-cause notice". They, however, did not name any of them, nor did they state any reason why they wanted to cross-examine them. The Superintendent of Customs who prepared the punchnama was, in fact, allowed to be cross-examined. It is settled law that cross-examination is not a matter of right. It should be claimed by stating

Signature Not Verified
Signed By:NAMITA DHYANI
Signing Date:22.07.2025 12:27:02

valid reasons. In the present case, the Learned counsel submitted that the appellants could not reply to the show-cause notice as they were not allowed to cross-examine the witnesses. That cross-examination of witnesses is a pre-requisite for reply to show-cause notice is an ill-conceived. notion. Where the department has issued a show-cause notice raising allegations against the Noticee and proposing to demand duty, penalty, etc. the Noticee may deny such allegations and plead the necessary facts and circumstances in support of his defence. It is at this stage that disputes arise between the department and the Noticee and the same have got to be adjudicated upon by the jurisdictional officer of the department. Once the case is before the adjudicating authority, the Noticee is at liberty to adduce evidence to support his own defence and/or to disprove the department's allegations. Cross examination of any person whose statement was relied upon by the Revenue in the show-cause notice has to be claimed at this stage and not before. Therefore, we have to reject the counsel's plea that the appellants could not file their reply to the show-cause notice on account of denial of cross-examination. In the facts the circumstances of this case, it can be held that no iota of doubt that the adjudicating authority duly observed the principles of natural justice."

Therefore, I hold that Sh. Rajesh Gadiya and Amit Kumar by requesting cross-examination of co-noticees without giving any reason are trying to subvert the entire proceedings and accordingly, the opportunity of cross-examination is denied to the said Noticees."

23. It is the settled legal position as held in the above decisions as also the recent decision even by this Court in ***W.P.(C) 4576/*2026** titled ***M/s Vallabh Textiles vs. Additional Commissioner Central Tax GST, Delhi East and Ors.*** that the right to cross examination is not an unfettered right. Prejudice has to

be shown which would lead to a conclusion that without cross examination substantial justice cannot be done. The relevant portion of the said decision in ***M/s Vallabh Textiles (Supra)*** reads as under:

> *"18. **A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof.***
> *19. The Court is of the considered view that parties cannot, by praying for cross-examination, cannot convert Show-cause Notice proceedings into mini-trials. **Persons seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained.** If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all."*

24. Furthermore, the Supreme Court in the decision in ***Civil Appeal No. 5121/2021*** dated 3rd September, 2021 titled ***'The Assistant Commissioner of State Tax & Ors. v. M/s Commercial Steel Limited',*** has categorically held that in order to entertain a writ petition, certain conditions have to be satisfied. The relevant portion of the said decision reads as under:

"11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. ***But a writ petition can be entertained in exceptional circumstances where there is:***

(i) a breach of fundamental rights;
(ii) a violation of the principles of natural justice;
(iii) an excess of jurisdiction; or
(iv) a challenge to the vires of the statute or delegated legislation.

12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case"

25. In the present case, all the parties were known to each other. Mr. Rajesh Gadiya had introduced the supplier to the importer *i.e.* Mr. Suresh Malik. Mr.

Rajesh Gadiya is a person who is in the trade and is aware of all the happenings in the trade. Mr. Rajesh Gadiya has also *prima facie*, enabled and facilitated the documentation for the said import.

26. The Adjudicating Authority relies upon the statement of Mr. Rajesh Gadiya to impose penalty upon him. Mr. Suresh Malik is also a person who is fully aware that he would be indulging in smuggling if he connives with Mr. Rajiv Sethi. Mr. Malik has done so consciously and deliberately.

27. The entire scheme of things, as per the Adjudicating authority, which was devised by these persons was to indulge in smuggling so as to avoid payment of customs duty and loss to the exchequer. In the opinion of this court, there is no violation of the principles of natural justice. None of the conditions for entertaining a writ petition as per the decision in ***Commercial Steel Ltd (supra)*** are satisfied.

28. Under these circumstances, this is not a fit case for entertaining a writ petition under Article 226 of the Constitution of India. There is a full-fledged substantial appellate remedy that is provided under the statute to the Petitioners.

29. Accordingly, the Petitioners ought to avail of its appellate legal remedy as per law. However, the limitation period for filing of the appeal under Section 129A of the Customs Act, 1962 is a period of three months and the said period has already expired.

30. In the facts of the present case, the Court is inclined to permit the Petitioners to file their appeals within one month, in which case, the appeals shall not be dismissed on the ground of limitation and shall be adjudicated on merits. The said appeals shall be filed along with the requisite pre-deposit.

31. At this stage, submission of Mr. Prem Ranjan, ld. Counsel for Mr.

Rajesh Gadiya is that some waiver of pre-deposit may be granted on the ground that the penalties imposed on the Petitioner is substantial.

32. Considering the consignment value, which is to the tune of Rs. 21.07 Crores, this Court is inclined to permit the Petitioner- Mr. Rajesh Gadiya to file his appeals subject to a total pre-deposit of Rs.1 Crore in both cases *i.e.* ***W.P.(C) 9858/2025*** and ***W.P.(C) 9899/2025***. If the pre-deposit is made along with the appeal, the same shall be entertained and adjudicated in accordance with law. In respect of the importer *i.e.,* Mr. Suresh Malik, no waiver or reduction of pre-deposit is being granted, in ***W.P.(C) 10028/2025.***

33. The present petitions are disposed of in the above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY 17, 2025/*gunn/ck*