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

Date of decision: 26th September, 2025
Uploaded on: 29th September, 2025

\+ **CUSAA 159/2025 , CM APPL. 62044/2025, CM APPL. 62045/2025 & CM APPL. 62046/2025**

COMMISSIONER OF CUSTOMS EXPORT .....Appellant
Through: Mr. Satish Aggarwala, SSC

versus

MAYANK GUPTA .....Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

CM APPL. 62044/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CM APPL. 62045/2025 (for delay)

3. This is an application seeking condonation of delay of 58 days in filing the appeal. For the reasons stated in the application, the delay in filing the appeal is condoned. Application is disposed of.

CM APPL. 62046/2025 (for delay)

4. This is an application seeking condonation of delay of 70 days in re-filing the appeal. For the reasons stated in the application, the delay in filing the appeal is condoned. Application is disposed of.

CUSAA 159/2025

5. The present appeal has been filed by the Customs Department under Section 130A of the Customs Act, 1962. It arises out of the impugned judgment dated 18th October 2024 *(hereinafter, 'impugned judgment')* passed by the Customs, Excise and Service Tax Appellate Tribunal *(hereinafter, 'CESTAT')* in ***Customs Appeal No. 50017/2020*** titled ***'Commissioner of Customs, ACC Export Commissionerate v. Shri Mayank Gupta'.*** *Vide* the impugned judgment, the CESTAT rejected the prayer of the Appellant for imposition of penalty under Section 114AA of the Customs Act, 1962 against the Respondent.

6. This Court has already considered an appeal being ***CUSAA 108/2025 titled 'Ravindra Kumar v. Commissioner of Customs (Export)'*** filed by Mr. Ravindra Kumar against the very same impugned judgment. This Court had rejected the said Appeal, *vide* judgment dated 12th August 2025.

7. The present case arises out of a specific intelligence regarding illegal export of '*Red Sanders*' which is stated to have been received by the Customs Department. Based on the said intelligence, certain consignments were intercepted which on examination were found to contain 'Red Sandal Wood' or '*Red Sanders*'. However, the supporting documents which were filed in respect of the same had declared the goods therein as '*household goods*'.

8. *Red Sandal Wood* has been recognised as an 'endangered' species under the international convention CITES and without a proper valid export certificate it cannot be exported.

9. The baggage declaration which was filed in the name of Mr. Vipin Dua was investigated and it was found that the airway bill was booked in the name M/s Sikki Auto India Pvt. Ltd. The said name itself was allegedly a forged name. One Mr. Sarvesh Kumar who was the Customs Broker had prepared all

the documentation. Mr. Ravinder Kumar of M/s Vin Global Logistics was a freight forwarder. He had provided the documents to Mr. Mayank Gupta of M/s Sky Barge Freight Pvt. Ltd. who is another freight forwarder, who then filed the airway bill in the name of the fictitious company.

10. The entire consignment was seized and penalties were also imposed on various other individuals who were involved in the chain of preparing the documents for exporting as also the other entities involved. The Order-in-Original was passed by the Adjudicating Authority on 25th July 2019 *inter alia* imposing a penalty of Rs.10 lakhs on the Respondent. The operative portion of the Order-in-Original reads as under:

> *"13. In the light of above discussion and finding, I pass the following order;*
> *i. I order for confiscation of the seized consignment of 1103.1 Kgs of Red Sanders under Section 113(d) and Section 113(h) (i) of the Customs Act, 1962;*
> *ii. I reject the declared value of the consignment (as mentioned in Para-32 of the SCN) under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and re-determine the assessable value of Red Sanders as Rs.2,00,00,306/- in terms of Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007;*
> *iii. I impose Penalty of Rs 50,00000 (Rs Fifty Lakhs) on Shri Prashant Jha under Section 114 and 114AA of the Customs Act, 1962*
> *iv. I also impose a penalty of Rs 75, 00000(Seventy five lakhs) on Shri Prashant Kumar Jha under Section 114 AA of the Act ibid.*
> *v. I impose Penalty of Rs 15,00000 (Rs Fifteen Lakhs) on Shri Servesh Kumar under Section 114 and but do not propose any penalty on him under Section114AA of the Customs Act, 1962.*
> *vi. I Impose Penalty of Rs 25,00000 (Rs Twent five*

Lakhs) on Shri Krishna Chandra Jha under Section 114 and but do not propose any penalty under Section 114AA of the Customs Act, 1962.
vii. I impose a penalty of Rs 10,00000 (Rs Ten Lakhs) on Shri Ravindra Kumar under Section 114 Of the Customs Act, 1962.
viii. I impose Penalty of Rs. 10,00000/ (Rs Ten Lakhs) on Shri Mayank Gupta under Section 114 of the Customs Act, 1962.
ix. I impose Penalty of Rs.5,00000 (Rs Five Lakhs) on Shri Nishant Kumar Singh under Section 114 of the Customs Act, 1962.
x. I impose a token penalty of Rs.5,000/ (Rs Five Thousand) on Shri Ankit Kumar under Section 114 of the Customs Act, 1962."

11. The above Order-in-Original was challenged by various parties including the Respondent herein. However, CESTAT has disposed of the appeals vide order dated 21st October 2024, in the following terms:

"43. In view of the above, the appeals are disposed of, as below :-
(i) Appeal No. : C/52671 of 2019 filed by Shri Mayank Gupta is dismissed.
(ii) Appeal No. : C/50017 of 2020 filed by Revenue seeking imposition of penalty on Shri Mayank Gupta under section 114AA of the Act is dismissed.
(iii) Appeal No. : C/52762 of 2019 filed by Shri Ravindra Kumar is dismissed.
(iv) Appeal No. : C/50016 of 2020 filed by Revenue seeking imposition of penalty under section 114AA of the Act on Shri Ravindra Kumar is dismissed.
(v) Appeal No. : C/50018 of 2020 filed by the Revenue seeking imposition of penalty under section 114AA of the Act on Shri Sarvesh Kumar is allowed and the impugned order is modified imposing penalty of Rs.

75,00,000/- on Shri Sarvesh Kumar under section 114AA of the Act.
(vi) Appeal No. : C/50015 of 2020 filed by Revenue seeking imposition of penalty under section 114AA of the Act on Shri Krishna Chandra Jha is allowed and the impugned order is modified imposing the penalty of Rs. 50,00,000/- on Shri Krishna Chandra Jha under section 114AA of the Act."

12. As can be seen from the above, a penalty of Rs.10 lakh has been imposed on the Respondent under Section 114AA of the Customs Act, 1962. However, the prayer for imposition of further penalty under Section 114AA of the Customs Act, 1962 has been rejected. Hence, the present appeal.

13. The Court has considered the matter. The role of Mr. Mayank Gupta has been discussed in the impugned judgment of the CESTAT. The same reads as under:

> *23. Mayank Gupta: Revenue's Appeal C/50017 of 2020 against Shri Mayank Gupta seeks imposition of penalty under section 114AA of the Act. The role of Shri Mayank Gupta was recorded by the Commissioner is as follows:*
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> > *"Shri Mayank Gupta, Director of M/s Sky Barge Freight Pvt. was third and final forwarder in sequence of arranging space in Airlines and shipping lines for the fake exporter without obtaining KYC of the main (fake) exporter from M/s Vin Global Logistics and M/s FSD Cargo Movers in respect of all the concerned AWB used for export of Red Sanders. Shri Mayank Gupta, vide his statement date 09.11.17 stated thal being freight forwarder they used to arrange space in airlines and shipping lines for the exporter/importers and other sub-agents for their cargo; that his company had issued the six AWB's*

> *as mentioned in the Panchnama dated 09.11.2017 (6 in nos.) in the name of M/s Sikki Auto India Pvt. Ltd., B-11/29, Mohan Co-Operative Industrial Estate, Badarpur, New Delhi - 110 004. Shri Mayank Gupta, vide his another statement 28.03.2018 stated that he was shown copies of two letters dated 17 and 18th October 2017 respectively wherein of M/s SIKKI Auto India Pvt. Ltd., B-11/29, Mohan Cooperative Industrial Estate, Badarpur, New Delhi - 110 044 requested for change of description in Master Air Way Bill No. 23267274712. On being asked about the same, he stated that those letters were provided to him by M/s Vin Global Logistics and not the exporter as stated in his earlier statement and he had been obtaining the KYC of the sub-agent and not the exporter; that in the case where any exporter directly approached him, then he used to obtain his KYC. After this case, he started the practice of obtaining the exporters KYC irrespective of whether the exporter approached him directly or through any agent and he did not know any person by the name of Shri Prashant Jha. On the basis of above facts, I find that Shri Mayank Gupta was also played the role of abetting smuggling.*

24. It is the case of the Revenue that it is apparent from the findings recorded by the adjudicating authority that Mayank Gupta was the freight forwarder who finally issued the airway bill in the name of a non-existing firm for non-available goods i.e., decorative products. He was the third and final forwarder involved in arranging space in airlines for export without obtaining the KYC of the main exporter. In fact, he issued the airway bill in the name of non-existed M/s Sikki Auto Pvt. Ltd. giving the address of M/s Seiki Auto Pvt. Ltd. The authorized representative of M/s Seiki categorically

stated that the name and address of the airway bills was false and that it had not made any export to Vietnam, during 2017-2018. Therefore, Mayank Gupta used and caused to be used forged documents related to export of prohibited goods knowingly and intentionally making him liable for penalty under section 114AA of the Act. …"

14. A perusal of the above extraction reveals Mr. Mayank Gupta, was -

(i) Third and final forwarder who issued airway bill in the name of non-existing firm for non available goods,

(ii) He was final forwarder who was involved in arranging for arranging space in airlines for export without obtaining KYC of main exporter,

(iii) He issued an airway bill in the name of non-existed M/s Sikki Auto Pvt. Ltd,

(iv) He used and caused to be used forged documents related to export of prohibited goods.

15. Considering the role played by Mr. Mayank Gupta, this Court is of the opinion that a penalty of Rs.10 lakh, which has already been imposed and has been upheld by the Court, would be sufficient penalty. Further penalty under Section 114AA of the Customs Act, 1962 would entail five times the value of goods being imposed upon the Respondent.

16. In view of the limited role played by Mr. Mayank Gupta, this Court is of the opinion that the penalty under Section 114AA of the Act has been rightly not beein imposed on the Respondent.

17. Hence, the Court is not inclined to entertain the present appeal. However, the question of law raised in the present appeal is left open to be considered in an appropriate proceeding.

18. The appeal is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 26, 2025
Rahul/Sm