

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

BEFORE:

THE HON'BLE JUSTICE OM NARAYAN RAI

WPO 662 of 2025

Shri Bikash Bose

vs.

Union of India & Anr.

For the Petitioner : Ms. Micky Chowdhary, Adv.
Mr. B.N. Pal, Adv.

For the Respondents : Mr. Uday Sankar Bhattacharya, Adv.
Mr. Tapan Bhanja, Adv.

Hearing Concluded on : 13.01.2026

Judgment on : 04.02.2026

Om Narayan Rai, J.:-

1. This writ petition under Article 226 of the Constitution of India is directed against an order in original dated July 01, 2025 passed by the Additional Commissioner of Customs (Port), Customs House, Kolkata whereby penalties have been imposed upon the petitioner under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962 (hereafter "the said Act of 1962").

FACTS OF THE CASE:

2. Briefly summed up the case run in the writ petition is as follows:-
 - a) The petitioner is a partner in a Partnership Firm, namely, J.B. Shipping Agency. Earlier, the partnership firm comprised of the petitioner and his wife. After the demise of his wife, the petitioner's daughter has been

inducted as a partner in the firm. However, the business of the firm looked after by the petitioner only. A business entity named M/s. Tshochhen Trading of Bhutan owned by Sri Lhapa Tshering (hereafter “importer”) had engaged the petitioner for filing necessary documentation with the Customs in respect of a Bhutan bound transshipment consignment of detergent powder imported from Malaysia in a fully sealed container.

- b)** The petitioner was provided with the following documents for the aforesaid purpose - i) authorisation letter in favour of the petitioner, ii) import license of the importer issued by the Government of Bhutan for importing detergent powder, iii) bill of lading, iv) invoice, v) packing list and vi) KYC.
- c)** The said transshipment was put on hold vide an alert dated June 14, 2024. The petitioner being the Customs House Agent (hereafter “CHA”) provided the authorities of the Directorate of Revenue Intelligence (hereafter “DRI”) copies of documents related to the import consignment including bill of lading, invoice, packing list, import license, letter of authorisation for CHA, etc, and cooperated with the investigating authorities.
- d)** On June 24, 2024 the container was examined in presence of the importer, the petitioner and the representative of the shipping agent namely, M/s. Expressway Container Line LLP.
- e)** Upon such examination, it was found that there was misdeclaration of goods inasmuch as the cargo contained not only detergent powder but also jute bags filled with poppy seeds.

- f)** Thereafter the importer, the petitioner and one Koushik Basak representing the shipping agent were examined and their statements were recorded by the Customs authorities.
- g)** On June 24, 2024 the importer for the first time produced an invoice different than the one that was handed over to the petitioner. While the said invoice bore the same invoice number as that of the petitioner, it differed in its content; since two items i.e., detergent powder and khas khas spice (poppy seed) were mentioned therein.
- h)** The importer stated that the supplier had sent wrong goods and had issued the new invoice as the goods had already landed at Kolkata and that he had decided to clear the items by amending importer license.
- i)** Thereafter, a notice dated December 12, 2024, was issued to the petitioner by the Additional Director, Directorate of Revenue Intelligence, Kolkata Zonal Unit thereby calling upon the petitioner to show cause as to why penalties under Sections 112(a), 112(b) and 114AA of the said Act of 1962 should not be imposed upon the petitioner. The show cause notice charged the petitioner with abatement in smuggling and having knowledge of mis-declared consignment. The notice also asserted that the petitioner had intentionally submitted false documents for the purpose of clearance of the import container from the shipping agent.
- j)** The petitioner replied to the show cause notice initially on January 10, 2025. The same was followed by another reply on May 06, 2025. A third reply was also furnished on June 06, 2025.

- k)** Ultimately, on July 01, 2025, the order in original was passed whereby penalties under Sections 112(a), 112(b) and 114AA of the said Act of 1962 were imposed upon the petitioner.
- l)** Feeling aggrieved by the said order in original the petitioner has approached this Court by filing the instant writ petition. The petitioner has questioned the imposition of penalties on him *inter alia* on the ground of arbitrariness, violation of principles of natural justice and also alleging that the petitioner had been saddled with much heavier penalty than the importer.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

- 3.** A brief summary of the submissions made by Ms. Chowdhary, learned Counsel appearing for the petitioner (both orally as well as in the written notes) is as follows:-
 - a)** The order impugned is wholly unreasoned. The order in original had been copiously copied from the notice to show cause.
 - b)** There is no discussion about the matter in the order impugned.
 - c)** The order in original has been passed without application of mind to the petitioner's reply along with the supporting documents, the submissions made and the judgments cited by the petitioner. It was further submitted that the submission made by the petitioner has also not been considered.
 - d)** Penalty had been imposed upon the petitioner mechanically and arbitrarily in violation of the provisions of Sections 112(a), 112(b) and 114AA of the said Act of 1962. In support of the proposition that an order without reason and without application of mind is a nullity, the petitioner relied on the judgments of the Hon'ble Supreme Court in the case of

Kranti Associates Private Limited & Another vs. Masood Ahmed Khan & Others.¹ and **State Project Director, U.P. Education For All Project Board & Others vs. Saroj Maurya & Others².**

- e) No penalty could have been imposed under Section 112(a) of the said Act of 1962 without any clear finding of knowledge, intention, *mens rea* or connivance. In support of such contention the petitioner relied on a judgment of the Coordinate Bench of this Court in the case of **Shuvam Chatterjee vs. Union of India & Another³.**
- f) A copy of a circular bearing no. 20/2024-Cus. (Instruction) dated September 03, 2024 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs, New Delhi was cited to contend that penalty cannot be imposed or levied unless the element of abetment of the Customs Broker is established by the investigating authority.
- g) Since the petitioner had no knowledge of the goods and the goods had already been sealed at a place beyond reach of the petitioner and there was no finding to the contrary, therefore, no penalty could have been imposed under Section 112(b) of the said Act of 1962. Relying on a judgment of the South Zonal Bench of Bangalore in the case of **Access World Wide Cargo vs. Commissioner of Customs, Bangalore⁴,** it was submitted that penalty under Section 114AA of the said Act of 1962 is only meant to be imposed on a fraudulent exporter.

¹ (2010) 9 SCC 496

² (2024) 12 SCC 609

³ WPO/378/2025, decided on 24.07.2025

⁴ 2022 (379) E.L.T. 120 (Tri.- Bang.)

- h)** The finding against the petitioner cannot be sustained inasmuch as, the petitioner had submitted all the documents to the customs authority which would be apparent from paragraph 2.5 of the notice to show cause (at page 46 of the writ petition) and paragraph 2.2 of the impugned order (at page 192 of the writ petition).
- i)** The petitioner made payment of service charges to the shipping agent in the usual course of business in terms of a circular dated December 21, 2009 issued by the Central Board of Excise and Customs.
- j)** The name of the supplier was already there in the Bill of Lading issued from Malaysia and the same was already there with the Customs authorities the same could not have been suppressed by the petitioner. It was further submitted that the fact that the petitioner has been held liable for “*omission and commission*” and “*abatement*” would indicate that the order has been passed in a routine manner in defiance of the Circular dated September 03, 2024 which is binding on the Customs authorities, without establishing the element of abatement by any evidence.
- k)** The petitioner had no means to know about the misdeclaration since the subject goods which exported from Malaysia for transshipment to Bhutan were covered by Indo-Bhutan Treaty; the Bill of Lading was issued in Malaysia declaring the goods as detergent powder; the misdeclared goods i.e. poppy seeds and detergent powder were also exported from Malaysia in a sealed container with lock and the clearance of the goods was possible only against a letter of guarantee issued by the Government of Bhutan. It was submitted that it was only after the misdeclaration was

discovered by the Customs authorities and the importer was examined that the importer produced a different invoice for the first time.

- l)** As the goods were in the custody of the Customs authorities, therefore, only the Customs authorities could have opened the lock and checked the goods, so the petitioner had no means to know about the misdeclaration as the documents only referred to detergent powder.
- m)** It was submitted that since the order impugned was wholly unreasoned, and none of the ingredients of Sections 112(a), 112(b) and 114AA of the said Act of 1962 had been established, the order in original should be quashed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

- 4.** Mr. Bhattacharya learned Advocate appearing for the respondent Customs authorities assisted by Mr. Bhanja, learned Advocate controverted the submissions made by Ms. Chowdhary. His submissions (both oral and written) are summarised hereinbelow:-
 - a)** Since the petitioner had an efficacious alternative remedy of appeal under Section 128 of the said Act of 1962 before Commissioner of Customs (Appeals), the writ petition should not be entertained.
 - b)** The case at hand involves disputed questions of facts and therefore this Court should not decide the writ petition on merits.
 - c)** The backdrop of the present case was briefly referred to by submitting that the container imported by the importer was put on high alert based on the specific intelligence received by the DRI that poppy seeds were being smuggled in the guise of Bhutan bound transshipment consignments

by misdeclaring the goods with an intention to divert the same into Indian market.

- d)** In the Bill of Lading the goods were declared as washing powder. On June 24, 2024 when the container was examined in the presence of the importer, the petitioner and the representative of the shipping agent, it was found to be filled with detergent powder as well as poppy seeds weighing 14.28MTS worth Rs. 2,85,60,000/-. The goods were therefore seized on June 24, 2024 under Section 110 of the said Act of 1962.
- e)** The importer, Shri. Lhapa Tshering was arrested by the DRI Authorities and investigation was done.
- f)** It was indicated that during investigation, Shri. Lhapa Tshering admitted in his voluntary statements given on June 24, 2025 and June 25, 2025 that the container contained goods other than what was declared in the documents.
- g)** It was asserted that on June 25, 2024 the petitioner made a voluntary statement that he knew Shri. Lhapa for 10 to 12 years as he had cleared "*imported equipment parts*" of Shri Lhapa in the past. The petitioner also indicated in the statement that upon learning about the letter issued against the import consignment, he had called the importer Shri. Lhapa Tshering to Kolkata to be present for the examination and prior to the day of the examination he was supposedly informed by the importer that the imported containers contained poppy seeds. The petitioner had further stated during examination that he did not possess any document related to the import consignment apart from the Bill of Lading and authorisation

letter as Shri. Lhapa had told him that the documents were being processed.

- h)** The voluntary statement of Shri Koushik Basak, Senior Executive of M/s. Expressway Containers LLP made on June 28, 2024 was referred to point out that the said person had stated that on June 10, 2024 the shipping agency had received an e-mail on its official e-mail ID from the petitioner asking for delivery of the container documents related to the import consignment.
- i)** It was asserted that Poppy Seeds are highly restricted as per DGFT Notification No. 54/2015-20 dated February 09, 2022 of delivery of the containers documents relating to import consignment and in the instant case Poppy Seeds have been illegally imported into India under the guise of detergent powder to evade the payment of customs duty.
- j)** It was submitted that from the aforesaid it will be clear that although the petitioner had stated that he did not have any documents relating to the consignment other than original Bill of Lading and authorisation letter, in fact, the petitioner was in receipt of original Bill of Lading and other forged documents having false details of the import containers. It was submitted that the petitioner was actively participating the containers independently in absence of the any direction of the importer and that the petitioner pro-actively sought to get the container release from the shipping agent housing documents having false information and paid the necessary charges from his pockets.
- k)** It was further submitted that the petitioner had abetted in the smuggling of foreign origin poppy seeds in the guise of misdeclared transhipment

consignment of Shri Lhapa Tshering. The petitioner misled the investigation by stating that he did not have any document in relation to the consignment apart from the original Bill of Lading and authorization letter, however on inquiry it was revealed that the petitioner was already in receipt of the original Bill of Lading and other forged documents in relation to the consignment.

- l)** It was argued that the petitioner had actively pursued the clearance of the import container independently, in the absence of any direction from the importer. The petitioner had already proceeded towards getting the container released from the shipping agent using documents having false information and also paid necessary charges from his own pocket.
- m)** It was asserted that the petitioner failed to disclose and refused to divulge details about the supposed supplier or any other parties involved with the said consignment for the purpose of shielding his accomplices in this illegal activity of smuggling.
- n)** The petitioner had through his acts of omission and commission rendered himself liable to penalty under Sections 112(a) and 112(b) of the said Act of 1962, since he had abetted in the smuggling and dealt with the misdeclared consignment of poppy seeds inspite of knowing that the same are liable to be confiscated under Section 111 of the said Act of 1962.
- o)** It was stressed that the petitioner had through his acts of omission and commission rendered himself liable to pay penalty under Section 114AA of the said Act of 1962, since he had knowingly and intentionally submitted forged and false documents for the purpose of clearance of the import container from the shipping agent.

- p) It was argued that all the acts of omission and commission as well as abetment in respect of the writ petitioner would be evident from the findings of the adjudicating authority in the order in original as well as from the statements of Shri Lhapa Tshering and Shri Koushik Basak.
- q) It was submitted that there was no infirmity and/or procedural lapse in the decision making process and the petitioner's allegation that the order impugned is merely a copy paste of the show cause notice is baseless and unfounded.
- r) A judgment of the Hon'ble Division Bench of this Court in the case of ***Sai-Dutta Clearing Agency Private Limited vs. Union of India***⁵ was cited in support of the contention that the adjudicating authority has imposed the penalty rightly under Section 112 of the said Act of 1962.
- s) It was submitted that the writ petition should be dismissed.

5. Learned Counsels for both parties distinguished the cited precedents, arguing, *inter alia*, that they are inapplicable to the facts of the present case.

ANALYSIS & DECISION:

6. Heard learned Advocates for the respective parties and considered the material on record.
7. It is now well settled that mere availability of an alternative statutory remedy should not dissuade a Writ Court from entertaining a writ petition if the same poses a case that falls within any of the categories viz. - (a) breach of principles of natural justice; (b) infringement of fundamental right; (c) challenge thrown to the vires of any Act or provision; (d) an action wholly

⁵ (2024) 19 Centax 222 (Cal.)

without jurisdiction; (e) where the statutory authority has not acted in accordance with the provisions of the enactment which regulates it.

8. It is equally well settled that if there are disputed questions of fact, a Writ Court would be loath to interfere, provided the dispute is of such nature that truth cannot be determined through affidavit evidence alone without resorting to a more protracted evidence taking mechanism.
9. In the case at hand the order in original passed by the adjudicating authority has been principally challenged on the ground that the same is unreasoned and is a product of non-application of mind. If such challenge gets sustained, the two preliminary objections would lose steam. The worth of such challenge, therefore, needs to be assessed first.
10. The impugned order in original reveals that the adjudicating authority has extracted the contents of the show cause notice, the petitioner's reply thereto dated May 06, 2024 and the petitioner's written submissions dated June 06, 2025. There is nothing wrong in such reproduction of the notice, its reply and submission provided the order impugned reveals that same is based on cogent reasons and the petitioner's case in defence has been appropriately considered before arriving at the ultimate conclusion.
11. The allegations levelled against the petitioner in the show cause notice which have also been incorporated in the order impugned may now be noticed:-

“11.2 Role played by Shri Bikash Bose, G Card Holder of Customs Broker firm M/s J. B. Shipping Agency:

Shri Bikash Bose appears to have abetted the smuggling of foreign origin poppy seeds by providing support in the Indian leg of the mis-declared import consignment. His role has been pivotal in the attempted smuggling of poppy seed in guise of mis-declared transshipment consignment of Shri Lhapa Tshering. Shri Bikash Bose, a

registered Customs Broker, had been authorized by Shri Lhapa Tshering to handle the clearance of the Bhutan bound transshipment consignment imported by the latter. However, investigation revealed that Shri Bikash Bose clearly had a larger role to play in the import of the mis-declared consignment. Shri Lhapa Tshering mentioned in his voluntary statement that he had assigned the job of customs clearance of the impugned consignment to M/s J B Shipping Agency, operated through its G Card holder Shri Bikash Bose, an old acquaintance of his. As per Shri Lhapa Tshering, Shri Bikash Bose was also supposed to arrange for the transporter to take the consignment to Bhutan. Further, in his voluntary statement, Shri Bikash Bose initially attempted to feign ignorance regarding the imported consignment, but his submissions were revealed to be false through further inquiry with the shipping agent and the importer Shri Lhapa Tshering, Shri Bikash Bose tried to mislead the investigation by stating he did not have any documents in relation to the consignment, when the container was seized, but inquiry with the shipping agent revealed that Shri Bikash Bose was already in receipt of the original Bill of Lading and the other forged documents having false details about the content of the imported container. Although Shri Bikash Bose claimed to have been working on the directions of the importer Shri Lhapa Tshering, the former independently went ahead with the clearance of the mis-declared goods. He had arranged to make payments for delivery of the container from the shipping agent from his own pockets, having admitted to not have received any money from the importer.

Shri Bikash Bose, once confronted with the fact that he had possession of the original import documents, admitted to have received them from the supplier in Malaysia, but he failed to disclose of how he had received those documents, unable to provide detail of receipt of any such package, obfuscating the identity of the alleged supplier. Thus, to summarize, it appears that Shri Bikash Bose had been brought in by the importer himself for clearance and transport of the impugned import consignment of mis-declared poppy seeds. Shri Bikash Bose was actively pursuing the clearance of the import container independently, in absence of any directions from the Importer himself. Shri Bikas Bose had already proceeded towards getting the container released from the shipping agent using documents having false information, and also paid the necessary charges from his own pockets. He further failed to disclose and refused to divulge details about the supposed supplier or any other parties involved with the impugned consignment, for the purpose of shielding his accomplices in this illegal activity of smuggling. In view of the discussions made herein above, it appears that Shri Bikash Bose rendered himself liable to penalty under Section 112(a) and Section 112(b) of the customs Act, 1962, insofar as he abetted the smuggling and dealt with the mis-declared consignment of poppy seeds, in spite of knowing those are liable

to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that Shri Bikash Bose is also liable to penalty under Section 114AA of the Customs Act, 1962, as he had knowingly and intentionally submitted forged and false documents for the purpose of clearance of the import container from the shipping agent, possibly planning to use the same forged documents to get customs clearance of the goods if it weren't interdicted by the DRI."

12. On the basis of the aforesaid allegations, the following findings were arrived at by the adjudicating authority:-

- "i. Shri Bikash Bose had a pivotal role in attempted smuggling of poppy seeds in guise of mis-declared transshipment consignment of Shri Lhapha Tshering, proprietor of M/s Tshochhen Trading.*
- ii. Shri Bikash Bose tried to mislead the investigation by stating that he did not have any documents in relation to the consignment other than Original BL and authorization. He further stated that importer had told him that all other documents are being processed, however, inquiry with the shipping agent revealed that Shri Bikash Bose was already in receipt of the Original Bill of Lading and other forged documents having false details about the content of the imported container.*
- iii. Shri Bikash Bose was actively pursuing the clearance of the import container independently, in absence of any directions from the importer.*
- iv. Shri Bikash Bose had already proceeded towards getting the container released from the shipping agent using documents having false information, and also paid the necessary charges from his own pocket. He further failed to disclose and refused to divulge details about the supposed supplier or any other parties involved with the impugned consignment, for the purpose of shielding his accomplices in this illegal activity of smuggling.*
- v. I also find that through his acts of omission and commission as discussed through the Show Cause Notice; Shri Bikash Bose rendered himself liable to penalty under Section 112(a) & 112(b) of the Customs Act, 1962, insofar as he abetted the smuggling and dealt with the mis-declared consignment of poppy seeds, in spite of knowing those are liable to confiscation under Section 111 of the Customs Act, 1962.*
- vi. I also find that through his acts of omission and commission as discussed through the Show Cause Notice; Shri Bikash Bose rendered himself liable to penalty under Section 114AA of the Customs Act, 1962, as he had knowingly and intentionally submitted forged and false documents for the purpose of clearance of the import container from the shipping agent."*

- 13.** Exercising writ jurisdiction in this case, this Court would only examine whether the statutory authority has acted in accordance with the provisions of the enactment in question while arriving at the said findings. (See- ***CIT vs. Chhabil Dass Agarwal***⁶)
- 14.** All the said findings as well as the preceding allegations substantially stem from the statements made by the petitioner, the importer and the shipping agent. This Court has gone through the statements made by each of the three persons i.e. the petitioner, the importer as well as the shipping agent.
- 15.** While the statements made by Shri Lhapa Tshering are clearly evasive, yet, the same do not in any case appear to have derogated or detracted from the statement made by the petitioner that the importer had taken away the original documents and had applied for amendment. Further a combined perusal of the petitioner's statements recorded on June 25, 2024 and July 08, 2024 would reveal that he has sought to explain why he had made the earlier statement that he did not have any document apart from the Bill of Lading and Authorisation Letter from the importer. Indeed his explanation was (is) not sacrosanct and was open to be disbelieved by the adjudicating authority but upon assigning reasons therefor.
- 16.** It is evident that the adjudicating authority has disbelieved the explanation of the petitioner. However, acting in a quasi-judicial capacity, the adjudicating authority was required to provide a reasoned basis for rejecting the petitioner's explanation, especially when imposing a penalty in a quasi-criminal proceeding. All the more so, since it was the case of the Customs authorities themselves in the show cause notice (as well as in paragraph 2.2

⁶ (2014) 1 SCC 603

of the order in original) that *“Before the examination procedures started, the CHA provided copies of documents related to the import consignment, including the Bill of Lading, Invoice, Packing List, Import License, Letter of Authorisation for the CHA, etc.”*.

- 17.** Similarly, while the adjudicating authority has drawn adverse inference against the petitioner for the petitioner actively pursuing the clearance of the import container independently, the adjudicating authority has lost sight of the clarifications provided by Circular No. 119/13/2009-S.T. dated December 21, 2009 issued by the Central Board of Excise and Customs, paragraph 2 whereof reads thus:-

“2. While the principal job of a CHA is to get the import or export consignments cleared through customs, they, being the persons on the spot also at times arrange for services for packing, unpacking, loading..... Normally CHAs initially pay the service charges to these agencies and later recover these charges from the customer along with their own charges CHAs. Similar arrangement can occur for payment of statutory levies like Custom Duties, Port Charges, Cesses etc, leviable on the said goods”

- 18.** In the wake of the aforesaid provisions of the said Circular, no adverse inference could have been drawn against the petitioner on the ground of the petitioner paying up the shipping agent at the first instance without first recourse to the importer.
- 19.** In the case at hand when penalties have been imposed under Section 112(a) and 112(b), as well as Section 114AA of the said Act of 1962, the tests prescribed for application of the said provisions must be first satisfied.
- 20.** Insofar as the application of Section 112(a) of the said Act of 1962 is concerned, a co-ordinate Bench of this Court has while exercising its powers under Article 226 of the Constitution of India set aside the adjudication

order imposing penalty in the case of **Shuvam Chatterjee** (supra) while observing as follows:-

“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—

(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

(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 subsection (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.”

- 21.** The aforesaid judgment applies on all fours in the case at hand. All that is there in the order impugned in the present case too is only a recasting of the allegations levelled in the notice to show cause and then certain definite conclusions without there being any clear finding that the petitioner had knowledge that the goods in question were poppy seeds along with detergent powder and not detergent powder only.
- 22.** Similarly, for invoking the provisions of Section 112(b) of the said Act of 1962 too, proof of knowledge of the goods in question is material. Here again there is nothing on record to establish that the petitioner either had knowledge or reason to believe that the goods put on board differed from what was declared.
- 23.** Insofar as the penalty imposed under Section 114AA of the said Act of 1962 is concerned, here too, it has not been established that the petitioner has acted with *malafide* intent or has wilfully misrepresented anything simply because the petitioner received certain the documents as Customs Broker. The adjudicating authority must put on record evidence to establish that the petitioner has knowingly assisted the importer in misdeclaring goods to evade duty or has used or caused to be used documents knowing the same to be false.
- 24.** Since a finding of knowledge and intention has been held to be essential for imposition of penalty under the aforesaid three provisions that have been

invoked against the petitioner, therefore such finding and its constituent ingredients (i.e. knowledge and intention) are jurisdictional in nature. Absent such finding and absent the ingredients, on the basis whereof such finding could be arrived at, no penalty can be imposed under either under Section 112(a) or under Section 112(b) or under Section 114AA of the said Act of 1962.

25. It is also noticed that the submissions made by the petitioner have not been dealt with. As already indicated, it has not been indicated in the order impugned as to why was the petitioner's explanation as regards the aspect that there is a prevalent practice of the Customs Brokers paying up the shipping and other charges at the first instance as recognised by the Circular dated December 21, 2009 not acceptable. There is no reason why despite specifically holding the importer Shri Lhapa Tshering to be the "*mastermind*" unequal standards were adopted to impose penalties. To wit, the amount of penalties levied on the importer under each of the three sections aforesaid, has been simply doubled in the case of the petitioner without indicating any basis therefor.

26. Insofar as the judgment in the case of ***Sai-Dutta Clearing Agency Private Limited*** (supra) is concerned, the Hon'ble Division Bench did not interfere with the order impugned since in the said case it had been established that the appellant before the Hon'ble Division Bench was a party to the entire under valuation exercise. In the case at hand there is no factual finding that the petitioner has acted *malafide* with knowledge and intent. The order impugned has repeated the show cause notice without any independent finding clearly connecting the petitioner to the offence.

27. The judgments of the Hon'ble Supreme Court in the case of **Kranti Associates Private Limited** (supra) and **Saroj Maurya** (supra) instruct that an order without reason cannot be sustained.
28. The judgment of CESTAT Bangalore in the case of **Access World Wide Cargo** (supra) has taken into consideration the 27th Report of the Standing Committee on finance and held that the provisions of Section 114AA of the said Act of 1962 should not be invoked against a Customs Broker and that the same are actually applicable to a fraudulent exporter.
29. For all the reasons aforesaid, the order impugned is set aside and the matter is remanded to the adjudicating authority for a fresh decision, in accordance with law. The adjudicating authority shall be free to initiate such other or further inquiries and seek such other or further clarifications as may be permissible in law, to reach appropriate decision in the matter.
30. WPO 662 of 2025 stands disposed of with the above observations. No costs.
31. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai, J.)