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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

CUSTA/84/2025
IA NO: GA/1/2025, GA/2/2026

COMMISSIONER OF CUSTOMS (PREVENTIVE)

Vs

SHRI PRAMOD NAHATA

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date : 09th APRIL, 2026.

Appearance:
Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
Mr. Gourab Karmakar, Adv.
...for the appellant.

Mr. Shovendu Banjerjee, Adv.
Mr. Soumyajit Mishra, Adv.
...for the respondent.

The Court:

1. Re: GA 1 of 2025 (Condonation of Delay)

1.1. Before we enter into the merits of the admission of this appeal, we first address the application for condonation of delay, registered as GA 1 of 2025. There is an admitted delay of 118 days in preferring this appeal.

We have perused the averments made in the application and heard the learned counsels for the appellant and respondent. We are satisfied that the appellant was prevented by sufficient cause from filing the appeal within the prescribed period of limitation. In the interest of justice and to ensure that the matter is considered on its legal standing, the delay is hereby condoned.

1.2. Accordingly, GA 1 of 2025 is allowed and disposed of.

2. Re: Admission of Appeal

2.1. The matter is now taken up for hearing on the point of admission. This statutory appeal, preferred under Section 130 of the Customs Act, 1962, is directed against the Final Order passed by the Learned Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata, dated 24th January 2025. By the impugned judgment, the Learned Tribunal set aside the penalties imposed upon the Respondent, who was acting as a Director of a Customs Broker firm, under Sections 112(a) and 114AA of the Act.

2.2. The Tribunal held that the Respondent was not liable for the alleged tax evasion, finding no evidence of *mens rea* or active participation in the fraud. The Tribunal further observed that the Respondent had merely discharged a ministerial duty by submitting documents provided by the importer. Aggrieved by this total exoneration and the consequent dropping of all penal proceedings, the Revenue has moved this Court, contending that the Tribunal failed to appreciate the vital and intentional role played by the Customs Broker in a high-value fraud.

3. FACTUAL MATRIX

3.1. The dispute originated from a specialized investigation conducted by the Directorate of Revenue Intelligence (DRI) concerning a series of 82 import consignments of readymade garments from Bangladesh. These imports were cleared by M/s. Future Enterprises Ltd. (the Importer) under the South Asian Free Trade Area (SAFTA) Agreement, whereby the goods were granted 100% duty exemption. This exemption was predicated on the goods meeting the "Rules of Origin," which stipulate that the value of non-originating materials used in the production must not exceed 70% of the FOB (Free on Board) Value, ensuring significant value addition within the SAFTA region.

3.2. Upon detailed scrutiny, the Revenue alleged a systematic evasion of duty by the Importer, who, in collusion with overseas suppliers, suppressed the value of "Free of Cost" (FOC) materials, such as fabrics and accessories supplied from third countries, to artificially keep the non-originating material content below the permissible threshold. Furthermore, the Revenue found that the Certificates of Origin (COO) submitted to substantiate the exemption were either tampered with or contained misstated facts regarding the cost structure of the garments.

3.3. The Respondent, in his capacity as the Director of the Customs Broker firm, was the authorized agent responsible for filing the Bills of Entry and navigating the clearance process. The essence of the Revenue's case against the Respondent is predicated upon the assertion that as a licensed Customs Broker, he was a "vital link" in the transaction. The revenue alleged that the Respondent knowingly facilitated the fraud by submitting these defective documents and intentionally suppressing material information from the Customs authorities, thereby violating the Customs Brokers Licensing Regulations (CBLR).

3.4. The Adjudicating Authority originally accepted the Revenue's contention, confirming the demand for duty and imposing significant penalties on the Respondent under Section 112(a) and Section 114AA of the Customs Act, 1962. However, upon an appeal preferred by the Respondent, the Learned Tribunal reversed this decision. The Tribunal found that the Revenue's method of quantifying the "non-originating material" was *ad hoc* and lacked a sound legal basis. More importantly, the Tribunal arrived at a factual finding that the Respondent acted merely as a ministerial conduit, processing documents handed over by the principal importer without any proven knowledge of the alleged underlying forgeries.

3.5. The Tribunal also addressed the procedural legality of the demand, observing that the adjudication order was passed beyond the one-year statutory mandate prescribed under Section 28(9) of the Customs Act.

Finding the proceedings hit by limitation and lacking evidence of *mala fide* intent on the part of the Broker, the Tribunal vacated the penalties *in toto*. It is this comprehensive exoneration that the Appellant/Revenue seeks to challenge in the present appeal, asserting that the Respondent's role was more than just clerical and had a direct impact on the massive loss of revenue.

4. SUBMISSIONS OF THE APPELLANT

4.1. Mr. Kaushik Dey, Learned Advocate appearing on behalf of the Appellant/Revenue, while pressing for the admission of this appeal, has first submitted that the Learned Tribunal failed to appreciate the gravity of the contraventions committed by the Respondent in his professional capacity. He contends that the Respondent, as a Customs Broker, was under a statutory mandate to verify the correctness of the information handled by him. Ld. Advocate alleges that the Respondent acted in a manner diametrically opposite to the provisions of the SAFTA Agreement Rules of Origin and the Customs Brokers Licensing Regulations. The Revenue asserts that the Respondent facilitated imports based on Certificates of Origin that were demonstrably tampered with or based on misdeclared values, thereby breaching the trust reposed in the licensing system.

4.2. It is further canvassed on behalf of the Appellant that the role of the Respondent was "vital" and cannot be characterized as merely "ministerial" or "conduit-like." It is the Revenue's case that the Respondent served as the primary interface between the Importer and the Customs Department. It is alleged that he intentionally suppressed material facts, specifically the omission of "Free of Cost" (FOC) material values, from the Customs authorities. This suppression was allegedly a calculated move to ensure the illicit availment of duty exemptions, resulting in a massive loss to the exchequer directly attributable to this orchestrated misdeclaration.

4.3. Regarding the preliminary objection on maintainability, Mr. Dey submits that the CBIC Instruction dated 02.11.2023 does not act as a bar to this appeal. He argues that since the penalty against the Respondent is "yet to be quantified" following the Tribunal's decision to set aside the order, the monetary limit cannot be strictly applied to deny the Revenue its right of appeal. Furthermore, he asserts that the nature of the fraud, which involves the integrity of international trade agreements, brings this matter within the "Exceptional Category" of the litigation policy, allowing the Revenue to contest adverse judgments irrespective of the specific amount involved.

4.4. In support of the contention that the "tax effect" is substantial, Mr. Dey places heavy reliance on the decision of this Hon'ble Court in 2023 (72) G.S.T.L 202 (Cal), also reported as (2023) 3 Centax 282 (Cal). Ld. Advocate submits that the ratio of the cited case establishes that where a Customs Broker or an authorized representative is found responsible for filing wrong information on behalf of an importer, the total revenue stake of the investigation must be the benchmark. He further submits that the total tax effect in the subject investigation exceeds Rs. 12 Crore, and therefore, the aggregate loss caused to the exchequer justifies the admission of the appeal.

4.5. Finally, Mr. Dey submits that the Tribunal's finding on limitation under Section 28(9) is fundamentally flawed. He argues that the Tribunal failed to consider the various COVID-19 relaxation notifications which legally extended the time-limits for adjudication. He maintains that these errors of law, coupled with the factual misappreciation of the Broker's role, constitute substantial questions of law that necessitate the intervention of this Court under Section 130 of the Customs Act.

5. SUBMISSIONS OF THE RESPONDENT

5.1. Mr. Shovendu Banerjee, Learned Advocate appearing on behalf of the Respondent, has vehemently opposed the admission of the appeal by raising a primary preliminary objection on maintainability alongside a substantial defence regarding the legal standing and obligations of a Customs Broker. He contends that the present appeal is not maintainable in light of the National Litigation Policy. Reliance is placed on the parent Instruction F. No. 390/Misc/163/2010-JC dated 17.08.2011 and the latest Instruction F. No. 390/Misc/30/2023-JC dated 02.11.2023. The relevant portion of the Instruction dated 02.11.2023 is reproduced below:

"In exercise of the powers conferred by Section 131BA of the Customs Act, 1962... the Central Board of Indirect Taxes & Customs fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Court and the Supreme Court:

S. No.	**Appellate Forum**	**Monetary Limit**
1	SUPREME COURT	Rs. 2 Crore
2	HIGH COURTS	Rs. 1 Crore
3	CESTAT	Rs. 50 Lakh

2. Adverse judgments relating to the following should be contested irrespective of the amount involved:

a) Where the constitutional validity of the provisions of an Act or Rule is under challenge;

b) Where Notification/ Instruction/Order or Circular has been held illegal or ultra vires;

c) Classification and refund issues which are of legal and/or recurring nature."

5.2. He underscores that the Board has fixed a mandatory monetary limit of Rs. 1 Crore for preferring appeals before the High Court. Since the Learned Tribunal has rendered a categorical finding that the Respondent has no tax liability and has vacated the penalty in its entirety, the "tax effect" in this appeal is nil. He argues that the Appellant cannot circumvent this binding instruction by clubbing the Importer's independent liability with that of the Broker.

5.3. Mr. Banerjee further submits that the Respondent's role as a Customs House Agent (now Customs Broker) is strictly governed by the Customs Brokers Licensing Regulations (CBLR). He contends that his duty is limited to the diligent submission of documents as provided by the client or importer to the Customs authorities. He argues that a Broker is not an investigator and cannot be expected to verify the "origin" of goods beyond the face of a Certificate of Origin issued by a foreign sovereign authority, which in this case was the Export Promotion Bureau of Bangladesh. He further maintains that since these certificates were never revoked or declared fake by the issuing authority, no liability can be fastened upon him for "filing wrong information" simply for placing those documents before the Proper Officer.

5.4. Mr. Banerjee for the Respondent submits that for the invocation of Section 112 or Section 114AA of the Customs Act, the Revenue must establish a "guilty mind" or an intentional act of fraud. The Learned Tribunal, being the final fact-finding authority, has already concluded that the Respondent acted in good faith and as a mere conduit in the transaction of business. This finding of fact, the Respondent argues, precludes the existence of any "substantial question of law" necessary for admission under Section 130. He asserts that the Revenue is merely attempting to re-appreciate evidence which has already been conclusively decided in favor of the Respondent.

5.5. To bolster the argument on maintainability and the scope of a Broker's liability, Mr. Banerjee places heavy reliance on the judgment of this Hon'ble Court in CUSTA 77 of 2026 (Shri Pramod Nahata vs. Commissioner of Customs) dated 12.03.2026. It is submitted that in that matter, which involved an identical set of facts and the same Respondent, this Court held that if the Tribunal finds a Customs Broker innocent of fraud and the penalty remains unquantified, the Revenue's appeal is hit by the monetary limits of the 2023 Instruction. The Respondent argues that the ratio of the said judgment squarely applies to the present case, and as the Appellant has failed to show any "exceptional circumstances" or recurring questions of law, the appeal ought to be dismissed at the admission stage itself.

5.6. Therefore, Mr. Banerjee concludes that in the absence of a quantified penalty and a proven link to the fraud, the appeal is an exercise in futility and ought to be dismissed at the admission stage itself.

6. DISCUSSION, FINDINGS AND CONCLUSION OF THE COURT

6.1. We have carefully considered the rival submissions, the detailed factual matrix, and the legal precedents cited at the Bar. The primary issue for our determination is whether the present appeal involves a substantial question of law that warrants admission under Section 130 of the Customs Act, 1962, particularly in light of the mandatory monetary thresholds prescribed for Revenue appeals.

6.2. Upon a perusal of the impugned order, we find that the Learned Tribunal, acting as the final fact-finding authority, has rendered a categorical finding that the Respondent was not a participant in the alleged fraud. The Tribunal observed that the Respondent's role was confined to the ministerial act of submitting documents, specifically the Certificates of Origin, handed over to him by the importer. In the absence of any evidence demonstrating that the Respondent had knowledge of the alleged forgeries, or that he intentionally suppressed material facts, no liability under Section 112 or Section 114AA can be sustained. These findings occupy the realm of pure fact, and the Appellant has failed to demonstrate any perversity in the Tribunal's reasoning that would elevate these issues to the status of a substantial question of law.

6.3. Furthermore, the maintainability of this appeal is heavily curtailed by the National Litigation Policy. The CBIC Instruction dated 02.11.2023 unequivocally fixes a monetary limit of Rs. 1 Crore for the Revenue to prefer an appeal before the High Court. In the instant case, the Tribunal has set aside the penalty against the Respondent in its entirety; consequently, there is no "tax effect" or "quantified penalty" currently existing against the Respondent. We find the Appellant's contention, that the total investigation value of Rs. 12 Crore should be the benchmark, to be legally untenable in the context of an appeal against a specific individual who has been exonerated. As held by this Court in CUSTA 77 of 2026, the monetary limit must be assessed in relation to the specific liability of the party before the Court. To allow the Revenue to club a Broker's case with an Importer's independent tax liability would effectively render the Board's own restrictive instructions nugatory.

6.4. We also find that this case does not fall within the narrow exceptions provided in the 2023 Instruction. There is no challenge to the constitutional validity of any provision, nor has any notification been held *ultra vires*. The dispute is entirely fact-centric, revolving around the degree of "due diligence" exercised by a Customs Broker in a specific transaction. Such matters do not constitute "recurring questions of law of significant public importance" as contemplated by the exceptions.

Additionally, while the Appellant raised a point regarding the statutory limitation under Section 28(9), such a legal question becomes academic once the primary finding of "no liability on merits" is upheld.

6.5. In view of the above, we are of the firm opinion that no substantial question of law arises for our consideration. The appeal is hit by the mandatory monetary limits prescribed by the CBIC and lacks the necessary legal foundation for admission.

6.6. Accordingly, the appeal (CUSTA 84 of 2025) is not admitted and is hereby dismissed.

6.7. Consequently, the connected applications for stay (GA 1 of 2025 & GA 2 of 2026) also stands disposed of.

6.8. There shall be no order as to costs.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

P.A.