IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 507 OF 2026

Nandkumar Pawar ...Petitioner
Versus
The Union of India & Ors. ...Respondents

Mr. Anil Balani a/w Jas Singhavi, P. Pawar i/b. Durgaprasad Pujari for Petitioner.

Mr. J. B. Mishra a/w Mamta Omle & Rupesh Dubey for the Respondents.

CORAM: G. S. KULKARNI & AARTI SATHE, JJ.

DATE: 4th FEBRUARY 2026

ORAL JUDGMENT (PER AARTI SATHE, J.):-

1. Heard learned Counsel for the parties.

2. This Petition under Article 226 of the Constitution of India challenges the Order-in-Original bearing No. JC/SW/98/ADJN. APSC (hereinafter referred to as "the impugned order") dated 3rd April 2024 whereby a penalty of Rs. 31,50,88,552/- under Section 112(a) and 112(b) and Rs. 129,14,32,317/- under Section 114AA of the Customs Act, 1962 (hereinafter referred to as "the Act"), being imposed on the Petitioner. The impugned order finds its genesis in search proceedings, which were carried out by the officers of the Customs (Preventive), Marine and Preventive Wing, Mumbai at the offices of M/s. Shree Charbhuja Diamonds Pvt. Ltd (SCDPL), M/s. Kanika Gems Pvt. Ltd and M/s. Yogeshwar Diamonds Pvt. Ltd., who allegedly indulged in making fraudulent outward foreign

exchange remittance using fake/duplicate bills of entries fabricated on the basis of genuine bills of entry.

3. Briefly, the facts are as under:-

i. The Petitioner acted as a Customs broker on behalf of SCDPL, who was the importer of diamonds. The Petitioner complied with the KYC norms and ascertained the authenticity of the importers through the website of the Directorate General of Foreign Trade (DGFT). The Importer also provided his Importer-Exporter Certificate (IEC) bearing No. 5211000731.

ii. After verifying the genuineness of the Importer on the basis of the KYC documents, the Petitioner cleared six import consignments of rough polished diamonds for SCDPL on 14th May 2013 and 15th May 2013.

iii. As stated above, on the basis of the intelligence received by the Customs Department, the officers of the Customs (Preventive), Marine and Preventive Wing, Mumbai conducted search and seizure actions at the various premises of the importers including SCDPL.

iv. Statements of various persons connected with the said import including that of the Petitioner was recorded by the officers under Section 108 of the Act and on the basis of the aforesaid investigation, the Customs Broker license of the Petitioner's firm was suspended by the Principal Commissioner of Customs (General), Mumbai Zone-I.

v. On the basis of the aforesaid investigation, the Additional Commissioner of the Customs (Preventive), Marine and Preventive Wing, Mumbai issued a show cause notice bearing No. II/MPIU-II/07/M&P/2014/SCN dated 9th February 2021 *inter-alia* alleging that the Petitioner willfully abetted in the misuse and mis-declaration of the name of the importer and IEC in the six bills of entry and therefore proposed to impose penalty on the Petitioner under Sections 112(a) and 112(b) along with Section 114AA and/or 117 of the Act. In pursuance of the aforesaid show cause notice, Respondent No.2 passed the impugned order which is the subject matter of challenge in the present Petition.

4. By the impugned order, a large penalty of Rs. 31,50,88,552/- under Section 112(a) and 112(b) and Rs. 129,14,32,317/- under Section 114AA of the Customs Act, 1962, has been imposed on the Petitioner. This penalty has been imposed on the basis of investigation carried out at the premises of the three importers as noted in para 2 above.

5. We have perused the records and the impugned order with the assistance of the learned Counsel for the parties, and we are of the view that the role assigned to the Petitioner in the impugned order in the aforesaid alleged cartel is rather vague one and does not bring out with clarity the complicity of the Petitioner in the entire transaction making him liable for the steep penalty being imposed under Section 112(a) and 112(b) along with Section 114AA of the Act. The role of the Petitioner as crystallized in the impugned order is reproduced below:-

"62.1) I find that Shri Nandkumar R. Pawar, as Director of M/s. Commercial Clearing Agencies Pvt. Ltd. had handled the customs clearances of 06 nos. of Bills of Entry of SCDPL. I find that Shri Nandkumar R. Pawar himself admitted the fact that the imports of diamonds under impugned 06 nos. of Bills of Entry were made by Shri Rajesh Jain @ Rajesh Kothari by using IEC of SCDPL and thus the said imports of the diamonds were not done by the actual IEC holder itself i.e. SCDPL which is in contravention of the regulations of DGFT circular No. 6 (Re-2013) 12009-2014 dated 16.09.2013 and Section 46 (4) of the Customs Act, 1962. He also admitted that he was aware that the persons' to whom he had delivered the imported goods (diamonds) on authority letter were not the actual IEC holder. I find that he willingly and wilfully abetted with Shri Rajesh Jain @ Rajesh Kothari in the mis-use and misdeclaration of the name of importer and IEC in impugned 06 Bills of Entry.

62.2) I find that by the above act of allowing to mis-use the name & IEC of SCDPL as "Importer", Shri Nandkumar R Pawar abetted with Shri Rajesh Jai Bhesh Kothari's acts of mis-use/mis-declaration of the name of importer as "SCDPL" and IEC as 5211000731 and contravened the regulations of DGFT circular No. 6 (Re-2013) 12009-2014 dated 16.09.2013 and Section 46 (4) of the Customs Act, 1962 rendering the imported goods viz. diamonds, covered under impugned 06 Bills of Entry of SCDPL handled by him (nandkumar), rendering the 16131.09 CTS of Diamonds totally valued at Rs. 31,50,88,552/- (Rupees Thirty One Crore Fifty Lakh Eighty Eight Thousand Five Hundred Fifty Two only) covered under impugned 06 Bills of Entry of SCDPL handled by him (Nandkumar), liable for confiscation under Section 111 of the Customs Act, 1962 and also made himself liable for penalty under Section 112 (a) & 112(b) and 114AA of the Customs Act, 1962."

6. The provisions under which, the penalty is being imposed on the Petitioner is primarily Sections 112(a) and 112(b) along with Section 114AA of the Act. The said provisions of the Act are reproduced below:-

*"**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 5 [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 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA 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.

114AA. Penalty for use of false and incorrect material.— *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 purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

(emphasis supplied)

7. On a plain reading of the aforesaid provisions, it is clear that the provisions of Section 112(a) and (b) apply to any person who in relation to any

goods, does or omits to do any act which act or omission would render such goods liable for confiscation under Section 111 or abets the doing or omission of such acts; Further, Section 112(b) makes any person liable for penalty 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. It is once this role or categorization of the act that is committed under Section 112 making the goods liable for confiscation is done, then the penalties as envisaged under Section 112 of the Act can be imposed. However, each act attracting penalty has been described in Section 112(a) and (b) of the Act and the department has to make out a case to show as to how the person has committed any of the aforesaid acts and is therefore liable to penalty under aforesaid provisions.

8. Further, Section 114 AA of the Act is a penalty which is sought to be levied in respect of a person who 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 purposes of this Act, then the penalty leviable would not exceed five times the value of goods. Here, again, the department will have to prove or show as to how a person has knowingly and intentionally made the false declarations.

9. To our mind, both the aforesaid provisions i.e. Sections 112(a) and 112(b) along with Section 114AA of the Act, empowering the department to impose substantial penalties are certainly very onerous provisions, hence to take any action under those provisions the department needs to make out a specific and a pointed case so as to attribute a formidable role which would be so strong seen from the facts on record, determining serious violations on the part of such person to commit illegality thereby breaching the provisions of law with an intention to evade duty, so as to bring such a person under their ambit and impose the penalties as envisaged therein.

10. Further on a bare reading of the impugned order imposing a steep penalty on the Petitioner, we are of the view that this basic ingredient of making out a specific charge as contemplated under Sections 112 (a) and (b) and 114AA of the Act, has not been done against the Petitioner in a precise and clear manner. Further, barring relying on the statement made by the Petitioner, which was retracted on an earlier occasion and only on the basis of bills of entry, Respondent No.2 has come to the conclusion in the impugned order that the Petitioner willingly and willfully abetted one Mr. Rajesh Jain @ Rajesh Kothari in the misuse and mis-declaration of the name of importer and IEC in the impugned six bills of entry. Further, the impugned order does not even give a finding as to what was the role played by the Petitioner in the entire transaction and also does not give any details as to what was the false declaration made by the Petitioner to attract the provisions of Sections 112 (a) and (b) and 114AA of the Act. There is also no

finding regarding the value of the goods which the Petitioner allegedly sought to mis-declare thereby rendering him liable for such a steep and humongous penalty. It is therefore our view that Respondent No.2 had no substantive reason so that a reasoned and speaking order could be passed against the Petitioner which could have crystallized the role of the Petitioner. This would render the impugned order liable to be quashed and set aside. The relevant paragraphs dealing with the role of the Petitioner in the impugned order is reproduced below:-

> ***Role of Shri NandKumar R. Pawar***
> *62.1) I find that Shri. Nandkumar R. Pawar, as Director of M/s. Commercial Clearing Agencies Pvt. Ltd. had handled the customs clearances of 06 nos. of Bills of Entry of SCDPL. I find that Shri. Nandkumar R. Pawar himself admitted the fact that the imports of diamonds under impugned 06 nos. of Bills of Entry were made by Shri Rajesh Jain @ Rajesh Kothari by using IEC holder itself i.e. SCDPL which is in contravention of the regulations of DGFT circular No. 6 (Re-2013) 12009-2014 dated 16.09.2013 and Section 46(4) of the Customs Act, 1962. He also admitted that he was aware that the persons' to whom he had delivered the imported goods (diamonds) on authority letter were not the actual IEC holder. I find that he willingly and wilfully abetted with Shri Rajesh Jain @ Rajesh Kothari in the mis-use and misdeclaration of the name of importer and IEC in impugned 06 Bills of Entry.*
>
> *62.2) I find that by the above act of allowing to mis-use the name & IEC of SCDPL as "importer", Shri Nandkumar R Pawar abetted with Shri Rajesh Jain @Rajesh Kothari's act of mis-use / mis-declaration of the name of importer as "SCDPL" and "IEC" as "5211000731" and contravened the regulations of DGPT circualar No. 6 (Re-2013) 12009-2014 dated 16.09.2013 and Section 46(4) of the Customs Act, 1962 rendering the imported goods viz. diamonds, covered under the impugned 06 Bills of Entry of SCDPL handled by him (nandkumar), rendering the 16131.09 CTS of Diamonds totally valued at Rs. 31,50,88,552/- (Rupees Thirty One Crore Fifty Lakh Eighty Eight Thousand Five Hundred Fifty Two only) covered under impugned 06 Bills of Entry of SCDPL handled by him (Nandkumar), liable for confiscation under Section 111 of the Customs Act, 1962 and also made himself liable for penalty under Section 112 (a) & 112(b) and 114AA of the Customs Act, 1962.*

11. In the aforesaid circumstances, in our opinion, the Petitioner be granted a fresh hearing to put-forth his contentions and thereafter a reasoned order with specific charges culling out the role of the Petitioner in the entire alleged cartel needs to be the appropriate cause of action, so as to ensure proper and just adjudication. In this view of the matter, we deem it appropriate to pass the following order, which will meet the ends of justice.

ORDER

a. Impugned order dated 3rd April 2024 and Corrigendum dated 24th June 2024 qua the Petitioner are hereby quashed and set aside.

b. Respondent No.2 shall grant an opportunity of a fresh hearing, to the Petitioner after issuing a notice to that effect and pass a reasoned order de novo after considering the submissions of the Petitioner, as expeditiously as possible and preferably within a period of 6 weeks from the day this order is made available to Respondent No.2;

c. Let all parties be heard. All rights and contentions of the parties are expressly kept open.

d. The Petition stands disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**