आयुक्त सीमा शुल्क का कार्यालय, आयात I-, न्यू कस्टम् हाउस, मुंबई- 400001
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
1st FLOOR NEW CUSTOM HOUSE, BALLARD ESTATE,
MUMBAI – 400 001
email id: adjn-adc-jc-imp1nch@gov.in

F. No. CUS/APR/SCN/461/2024-GR-5 O/O COMMR-CUS-IMP-I-ZONE-I-MUMBAI
Date of Order: 05.08.2025 Date of Issue: 06.08.2025
DIN- 20250877000000041464A

Order No. 09/JC/AS/ADJ/2025-26
Order Passed by: Shri Arshdeep Singh, Joint Commissioner of Customs, Import-I, New Custom House, Mumbai Customs Zone-I

Name of Parties/Noticees: M/s Sandhu Logistics having address at Lalbaba Tube Complex, Kailash Nagar, Burmamines, Jamshedpur-831007

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मूलआदेश

1. यह प्रति उस व्यक्ति के उपयोग के लिए नि: शुल्क दी जाती है जिसे यह जारी की गई है।
This copy is granted free of charge for the use of the person to whom it is issued.

2. इस आदेश के खिलाफ अपील इस आदेश के संचार की तारीख से साठ दिनों के भीतर और सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के तहत सीमाशुल्क आयुक्त (अपील) न्यू कस्टम हाउस, बलार्ड एस्टेट, मुंबई-400001 के समक्ष होगी। मांग किए गए शुल्क के 7.5% का भुगतान जहां शुल्क या शुल्कऔर जुर्माना विवाद में है या जुर्माना जहां अकेले दंड विवाद में है।
An appeal against this order shall lie before the Commissioner of Customs (Appeals), New Custom House, Ballard Estate, Mumbai- 400001 under Section 128(1) of the Customs Act, 1962 within Sixty days from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.

3. अपील सीमाशुल्क (अपील) नियम 1982 में प्रदर्शित फॉर्म सी.ए.–I में दो प्रति में की जानी चाहिए।अपील रुपये 1.50 /- के न्यायालय फीस स्टांप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम 1970 कीअनुसूची 1 में प्रदर्शित रूपये 1.50/- की न्यायालय फीस स्टांप भी होना चाहिए।
The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 1.50 paise paid only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs. 1.50 paise only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

4. इस निर्णय या आदेश के खिलाफ अपील करने वाला कोई भी व्यक्ति, अपील लंबित होनेपर, सीमाशुल्क अधिनियम, 1962 की धारा 129 ई के तहत उपरोक्त पैरा 2 के अनुसार राशि जमा करेगा, अपील के साथ इस तरहके भुगतान का प्रमाण प्रस्तुत करेगा, जिसमें विफल रहने पर अपील की जा सकती है।सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के प्रावधानों का अनुपालन न करने के कारण खारिज कर दिया गया।
Any person appealing against this decision or order shall, pending the appeal, deposit the amount as per Para 2 above under Section 129E of the Customs Act, 1962 are produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 128(1) of the Customs Act, 1962.

5. यदि इस आदेश के खिलाफ अपील दायर की जाती है, तो अपील संख्या और तारीख की सूचना निर्णय प्राधिकारी का कार्यालय, अपर/संयुक्त सीमा शुल्क आयुक्त का कार्यालय, आयात-I, प्रथम तल, न्यू कस्टम्स हाउस, बैलार्ड एस्टेट, फोर्ट, मुंबई - 400 001 को दी जानी चाहिए।
If an appeal is filed against this order, the appeal number and date should be intimated to the Office of the Adjudicating Authority at Office of Addl. Commissioner of Customs, Import-I, 2nd Floor, New Customs House, Ballard Estate, Fort, Mumbai - 400 001.

ORDER IN ORIGINAL ROUND -2

In the matter at hand, Order-in-Original No. 43/ADC/VS/ADJ/2023-24 dated 27.06.2023 was issued pursuant to Show Cause Notice (SCN) No. DRI/MZU/B/Inv-16(3)/2010-11 dated 19.11.2012.

Aggrieved by the said Order-in-Original, the appellant, M/s Sandhu Logistics, filed an appeal before the Commissioner (Appeals), Mumbai Zone-I. Subsequently, the Commissioner (Appeals), vide Order-in-Appeal No. MUM-CUS-TK-IMP-185/2023-24/NCH dated 18.03.2024, remanded the matter back to the Original Adjudicating Authority (O.A.) with directions to re-examine, verify, and confirm the payment and appropriation of dues and to pass a specific order in this regard.

Thus, the matter has come up for de novo adjudication on the specific grounds as directed by the Commissioner (Appeals).

BRIEF FACTS OF THE CASE

Intelligence was gathered by the officers of the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit, Mumbai that several importers of second-hand cranes were involved in evasion of customs duty by undervaluing the said imports. The intelligence also indicated that during the past 5-6 years, importers were getting the import invoices prepared by working out the value of the crane @28 to Rs. 40 per kg. of the weight of the crane, as against the actual transaction value of the said cranes. In addition to the above, importers were also suppressing the freight charges paid to the shipping line. The import invoices were prepared to show the value of the cranes as on CIF basis whereas the purchase was mostly on 'FOB basis'. The said importers were also getting the 'bills of lading' prepared to show the freight as prepaid with the assistance of the Shipping Agents. Briefly stated, modus operandi was to evade payment of duty on the cost as well as the freight component of the import value of the cranes, as the freight of the crane formed a sizeable chunk of the CIF value of the crane. The differential amount pertaining to the suppressed value and the freight component was being remitted overseas by the importers, through non-banking channels (hawala). It was gathered that the bills of entry for import clearance of the said cranes from Mumbai / Nhava Sheva ports were filed by Shri Madan Lalwani of M/s. M. Dharamdas & Co. (CHA 11/100).

2. During the search of office premise of Shri Madan Lalwani [who was attending to clearance of cranes by filing bills of entry through M/s. M. Dharamdas & Co. (CHA 11/100)] large number of documents of clearance of cranes on behalf of various importers were recovered. During search of his residential premises some documents were recovered and cash of Rs. 23,39,500/- was recovered which was deposited in the Government Account.

3. During the search of Sh. Brijesh Gala (who was engaged in transferring money overseas through unofficial channel means (hawala) on behalf of various crane importers) a laptop was recovered and during the search of his office premises some documents and amount of Rs. 10.5 lakhs and foreign currency of 5000 UK Pounds (equivalent to Rs., 35 lakhs) were recovered which was deposited in the Government Account.

4. During the statements recorded under Section 108 of the Customs Act, 1962, Shri Madan Lalwani interalia stated that he had undertaken the clearance of cranes for various parties; import clearance work of machinery, PTA, second-hand cranes were exclusively looked after by him; on his advice most of the importers calculated the value at the rate of Rs. 40/- per kg. of the weight of the crane. As there was reason to believe that Shri Madan Lalwani was involved in a conspiracy resulting in evasion of duty, he was arrested and later released on bail.

5. During the statements recorded under Section 108 of the Customs Act, 1962, Shri Brajesh Gala inter alia stated that he was in business of money transfer on commission which is without any documentation; to collect money in Mumbai and to deliver the same in metro cities and vice versa; he was also involved in the transfer of money abroad; he had done money transfer for persons engaged in the business of cranes.

6. One of the crane importers listed in the statement of Shri Madan Lalwani was M/s. Suraj Trading Co., whose premises were searched; some documents and hard disk of the computer were recovered; scrutiny of documents revealed that they had imported many used hand cranes and had sold them on high seas. One such used P&H 9125 TC crane (impugned crane) was sold on high seas basis by M/s. Suraj Trading Co. to M/s. Sandhu Logistics (Appellant). The said crane was cleared vide B/E No. 803010 dated 02.11.2007 (impugned B/E) on payment of customs duty of Rs. 8,60,608/-.

7. During the statements recorded under Section 108 of the Customs Act, 1962, Shri Kirti Kothari, partner of M/s. Suraj Trading interalia stated that they had earlier imported 20 cranes and Shri Madan Lalwani used to clear the said cranes; as regards the difference between the actual price and the price shown in the invoice submitted to the customs he stated that difference was mainly transferred through Brijesh Gala who used to do hawala business; agreed to pay the entire duty evaded; giving details of under-valuation of the cranes and accessories admitted to have paid cash toward their purchase which was not declared in import documents; admitted to have paid Rs. 16,00,000/- in cash to the overseas supplier over and above the declared value for the P&H 9125 TC crane imported in the name of M/s. Sandhu Logistics; admitted that Rs. 1.18 crore was understated in the Bs/E vide which 15 cranes and accessories were imported, including the crane covered in the subject case. The said amount was transferred to the overseas supplier through hawala channel by Sh. Brijesh Gala. M/s. Suraj Trading voluntarily deposited Rs. 50 lakhs towards the differential duty payable them.

8. M/s. Sandhu Logistics vide their letter dated nil submitted that after the purchase they found that the impugned crane was not in a good condition; they requested M/s. Suraj Trading Co. to take the same back and it was taken back in the name of M/s. Symphony Crane Service, a firm managed by Shri Suresh Shah, partner of M/s. Suraj Trading Co.; Shri Ajit Singh Sandhu, partner of M/s. Sandhu Logistics who had purchased and returned the said crane has expired.

9. Shri Suresh Shah, partner of M/s. Suraj Trading in his statement admitted that the transaction value of the said crane is Rs. 48 lakhs and agreed to pay the differential duty and further requested to appropriate the duty from Rs. 50 lakhs paid by them against duty liability.

10. Accordingly, the show cause notice demanding duty in respect of the 4 cranes imported and cleared in the name of M/s. Suraj Trading was issued on 25.05.2012. M/s. Suraj Trading has filed an application before the Settlement Commission accepting the duty demanded in the said SCN. Show Cause Notice No. DRI/MZU/B/Inv-16(3)/2010-11 dated 09.11.2012 was issued to all noticees in respect of the impugned crane. Further, in pursuance to another SCN dated 25.05.2012, Settlement Commission vide Final Order No. 56/Final Order/CUS/ISG/2013 dated 22.05.2013 ordered appropriation against deposit of Rs. 50,00,000/-. Accordingly, Rs. 13,45,876/- was appropriated leaving the balance of Rs. 36,54,124/-. From para 14 of the impugned OIO, it is evident that representative of M/s. Suraj Trading Co. and Shri Suresh Shah requested to adjust the further demand in terms of Settlement Commission Order and requested to adjust duty demanded of Rs. 6,27,938/- alongwith interest of Rs. 2,54,960 (from 02.11.2017 to 16.12.2010), i.e. total duty and interest is Rs. 8,82,898/- and penalty 25% of Rs. 8,82,898/- which equals to Rs. 2,20,725/-. Thus, requested to adjust Rs. 11,03,623/- (Rs. 8,82,898/- + Rs. 2,20,725/-) from the balance deposit of Rs. 36,15,124/-.

11. The impugned SCN was adjudicated by the Additional Commissioner, New Custom House, Mumbai vide Order-in-Original No. 43/ADC/VS/ADJ/2023-24 dated 27.06.2023 as under -

(a) rejected the declared assessable value of Rs. 27,75,134/- of the used P&H 9125 TC crane imported vide B/E No. 803010 dated 02.11.2007 and cleared in the name of M/s. Sandhu Logistics, under the provisions Rule 12 of Customs Valuation Rules, 2007 read with Section 14 (1) of the Customs Act, 1962; re-determined the assessable value in terms of Rule 3(1) of

the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962 at Rs.48,00,000/-

(b) confirmed the demand of differential duty as Rs. 6,27,938/-(Rupees Six Lakh Twenty-Seven Thousand Nine Hundred and Thirty-Eight only) leviable on the aforesaid used crane, imported and cleared in the name of M/s Sandhu Logistics vide bill of entry no. 803010 dated 02.11.2007, under the provisions of Section 28 of the Customs Act, 1962 alongwith interest under the provisions of Section 28AA (prior to 08.04.2011 under the Section 28AB ibid (under Section 28AA after 08.04.2011);

(c) confiscated the goods having re-determined value of Rs. 48,00,000/- under Section 111 (m) of the Customs Act, 1962 with an option to redeem the goods under Section 125 of the Customs Act, 1962 on payment of redemption find Rs. 2,00,000/-;

(d) Imposed a penalty of Rs. 6,27,938/- (Rupees Six Lakh Twenty-Seven Thousand Nine Hundred and Thirty-Eight only) under Section 114A of the Customs Act, 1962 in relation to the said crane cleared in the name of M/s. Sandhu Logistics and hence refrained from imposing penalty under Section 112(a) ibid which is otherwise leviable.

(e) Imposed a penalty of Rs. 50,000/- under Section 114 AA of the Customs Act, 1962 on M/s. Sandhu Logistics;

(f) imposed a penalty of Rs. 50,000/- under Section 112(a) of the Customs Act, 1962 on each, Shri Suresh Shah and Shri Kirti Kothari, both partners of M/s. Suraj Trading;

(g) imposed a penalty of Rs. 1,00,000/- under Section 114AA of the Customs Act, 1962 on each, Shri Suresh Shah and Shri Kirti Kothari, both partners of M/s. Suraj Trading; refrained from imposing penalty on Shri Brijesh Gala;

(h) held that proceeding against Shri Madan Lalwani of SCN No. DRI/MZU/B/Inv-16(3)/2010-11 dated 09.11.2012 as abated;

(i) appropriated remaining balance of Rs. 36,54,124/- paid by M/s. Suraj Trading Co. against duty difference, interest and other liabilities.

12. Aggrieved with the impugned order the appellant M/s. Sandhu Logistics has filed appeal against the above Order-in- Original.

The appellant M/s. Sandhu Logistics has filed the appeal on the following grounds -

i. The appellant has submitted that the impugned OIO has been passed without providing any cogent reasons or explanations, without taking into considerations all the aspects of the case and liable to be set aside.

ii. Respondent has not appreciated the fact that Mr. Ajit Singh Sandhu of the appellant, who was primary person concerned with the transaction in question expired in the year 2011, despite the said fact is recorded in the impugned OIO; considering the said facts, the OA has grossly erred in proceeding against the appellant; OA has abated the proceedings against the co-noticee Mr. Madan Lalwani of M/s. M. Dharmadas & Co. who had expired; on this ground the impugned OIO to be set aside;

iii. M/s. Suraj Trading Co. had approached the Settlement Commission and had deposited Rs. 50,00,000/-; the differential duty of Rs. 6,27,938/- on the B/E No. 803010 dated 02.11.2007 was adjusted from the said deposit. However, OA had ignored the said fact and again demanded the differential duty; such demand is unlawful and bad in law;

iv. In para 12 (vii) of the impugned OIO, the appellant was not named to be part of the said alleged conspiracy; the appellant is alleged to be part of the said conspiracy on basis of statements of co-noticees;

v. The OA has erred in penalizing the appellant only on the basis of the statements of the co-noticees; nothing substantial on record to prove their involvement in the alleged fraud; relied

upon the judgement Hon'ble Supreme Court in AIR 1964 SC 1184 and reaffirmed by various High Courts and CESTAT that 'no reliance can be place on the statement by other co-noticees.'

vi. The appellant proceeded to clear the goods on the belief that the invoice, other documents and the details contained therein, which were procured from M/s. Suraj Trading & Co. were true and correct and filed the impugned B/E; as the crane was not in proper condition same was returned back to Mr. Suresh Shah in the name of M/s. Symphony Crane Services; the conspiracy was hatched by M/s. Suraj Trading and co. and the appellant has not played any role in the same;

vii. No evidence on record to prove that the appellant was involved in the conspiracy except for the statements of the co-noticees; without any evidence the appellant has been penalized;

viii. The impugned order is liable to be dropped and set aside and hence no penalty is imposable on the appellant;

ix. Prayed to set aside the SCN and impugned OIO with consequential reliefs.

13. Personal hearing in the matter was conducted by Hon'ble Commissioner (Appeal) on dated 19.02.2024 which was attended by Ms. Chahat Modi, Advocate on behalf of the Appellant. She reiterated the submissions made in the appeal memo and submitted the reply to departmental letter dated 19.02.2024 regarding proof in respect of date of communication of the impugned OIO and reasons of the delay will be submitted and said that she has nothing to add to their submissions. No one appeared for the personal hearing from the Respondent side.

14. Commissioner (Appeal) has found that Appellant has not submitted any proof with appeal petition to substantiate that liabilities against the crane imported vide impugned B/E has been recovered / paid. Subsequently, Respondent was requested to produce any such evidence, if any. The Respondent vide letter dated 14.03.2024 informed that M/s. Suraj Trading Co. had imported 15 cranes, cleared 4 themselves, and sold 11(including the one in question) on high seas. They deposited ₹50,00,000/- during DRI investigation. The Settlement Commission, vide Order dated 22.05.2013, settled duty only for the 4 cranes imported directly by them and appropriated ₹13,45,876/-, leaving a balance of ₹36,54,124/-. However, this order does not cover Bill of Entry No. 803010 dated 02.11.2007 filed by M/s. Sandhu Logistics. Further, there is no documentary evidence that the duty demand on the crane cleared by M/s. Sandhu Logistics was adjusted from the balance amount with the Settlement Commission.

15. The Commissioner (Appeal) condoned a 30-day delay in filing the appeal under Section 128(1) of the Customs Act, 1962, as the appellant provided reasonable justification (illness of partner and earlier email submission).

16. The case concerns the import of a used P&H 9125 TC crane by M/s. Sandhu Logistics under B/E No. 803010 dated 02.11.2007, which was undervalued. The declared value of Rs. 27.75 lakhs was rejected and re-determined at Rs. 48 lakhs, resulting in a differential duty demand of Rs. 6,27,938/-, and associated penalties and redemption fine.

17. Further, the Commissioner (Appeals) upheld the adjudicating authority's finding that M/s. Sandhu Logistics was part of a conspiracy to undervalue imported goods, along with M/s. Suraj Trading Co. and others, based on statements recorded under Section 108 of the Customs Act and supporting evidence.

18. The Commissioner (Appeals) found that the appellant's argument that no penalty should be imposed due to the death of partner Mr. Ajit Singh Sandhu was rejected. Penalty on the firm is valid under law, regardless of the death of a partner, as per the Partnership Act and relevant case laws.

19. The Commissioner (Appeals) also found that statements of co-noticees under Section 108 of the Customs Act were held as admissible evidence. Madan Lalwani's statement (now deceased) was also relied upon under Section 138B of the Act.

20. Under Section 46 of the Customs Act, the importer is responsible for accuracy of documents and declarations in the bill of entry. Hence, the plea of relying on documents from M/s. Suraj Trading Co. was not accepted.

21. The appellant's claim that the duty was already settled by M/s. Suraj Trading Co. was found unsubstantiated by the Commissioner (Appeal). The Settlement Commission's order did not cover the crane in question or the bill of entry relevant to M/s. Sandhu Logistics. No evidence was provided to show the differential duty was adjusted from the balance Rs. 36.54 lakhs deposited.

22. Further, The Commissioner (Appeals) upheld the adjudicating authority's order including:

- Duty demand of Rs. 6,27,938/-
- Penalty under Section 114A and 114AA
- Redemption fine of Rs. 2,00,000/-
- Rejection of undervalued invoice and acceptance of re-determined assessable value

23. Further, Commissioner (Appeal) found that at para 24 (i) OA has stated that *"I appropriate remaining balance of Rs. 36,54,124/- paid by M/s. Suraj Trading Co. against duty difference, interest and other liabilities, as above."*

24. Considering the above facts, Commissioner (Appeal) found that "*Respondent's reply dated 14.03.2024 is not in consonance with the OA's view at para 24 (i). Further, from the impugned OIO, I find that in absence of specific mention of payment of Govt. dues as appropriation for goods cleared vide B/E No. 803010 dated 02.11.2007 by the appellant and other co-noticees and in view of department's submission as mentioned above that there is no proof regarding appropriation / adjustment of confirmed demand against the appellant, it will be appropriate to re-examine and verify and confirm the payment and appropriation of dues by remanding the matter back to OA to pass specific order in this regard."*

25. In view of the above discussions, Commissioner (Appeal) has remanded the matter back to original authority on above terms.

26. In the matter, the Directorate of Revenue Intelligence (DRI) was the original investigating agency, and the Show Cause Notice (SCN No. DRI/MZU/B/Inv-16(3)/2010-11/14543 dated 09.11.2012) was also issued by them. Accordingly, a letter dated 27.05.2025 was addressed to the Pr. Additional Director General, DRI, Mumbai Zonal Unit, requesting specific information regarding the deposit of ₹50,00,000/- made by M/s Suraj Trading Co. in connection with the above-referenced SCN.

In order to proceed further with the denovo adjudication proceedings, the following information was sought from DRI:

Copy of TR-6 Challan dated 16.12.2010 for payment of ₹50,00,000/-

a) The purpose for which the above deposit was made;

b) Details of the consignments/Bills of Entry covered under this payment, along with relevant statements of the party;

c) Comments on whether the appropriation made by the Adjudicating Authority in the OIO dated 27.06.2023 is factually and legally correct in light of the DRI investigation records.

27. Further, reply letter dated 17.06.2025 received from the Additional Director, DRI, Mumbai.

Vide the above-referenced letter, the following has been communicated:

- *A copy of TR-6 Challan No. 241 dated 16.12.2010 for payment of ₹50,00,000/- has been provided (copy enclosed).*
- *It is informed that letter dated 09.12.2010 from M/s. Suraj Trading Co. enclosed P.O. No. 106914 dated 09.12.2010 for ₹50 Lakhs, representing a voluntary payment towards duty evaded on the import of cranes. This amount was deposited in the Customs treasury vide the above-mentioned TR-6 Challan.*
- *A disclaimer certificate dated 08.08.2012 was also furnished by Shri Kirti Kothari, stating that the ₹50 Lakhs pertains solely to M/s. Suraj Trading Co., and no claims shall be made by them in relation to past or future liabilities on this amount.*

Further:

- *During the investigation, it was revealed that M/s. Suraj Trading Co., through Shri Kirti Kothari, had imported 15 cranes, of which 4 were cleared by them. The remaining 11 cranes (including the one in the present case—used P&H 9125 TC crane imported by M/s. Sandhu Logistics vide B.E. No. 803010 dated 02.11.2007) were sold on high seas.*
- *The demand concerning the 4 cleared cranes was raised vide SCN No. DRI/MZU/B/INV-16/2010-11 dated 25.05.2012, which was settled by the Hon'ble Settlement Commission vide Final Order No. 56/FINAL ORDER/CUS/ISG/2013 dated 22.05.2013.*
- *Against the ₹50 Lakhs deposited, an amount of ₹13,45,876/- [Differential Duty – ₹7,93,876/- + Interest – ₹3,42,000/- + Fine – ₹1,85,000/- + Penalty (Suraj Trading Co.) – ₹25,000/-] was appropriated, leaving a balance of ₹36,54,124/-.*

Additionally, they informed that the Order-in-Original dated 27.06.2023, arising from SCN dated 09.11.2012, pertains to undervaluation in the import of the same used crane by M/s. Sandhu Logistics. The adjudicating authority imposed differential duty, fine, and penalty.

Further, they observed that the personal penalty of ₹50,000/- imposed on M/s. Sandhu Logistics under Section 114AA, as stated in Para 24(e) of OIO dated 27.06.2023, appears to be incorrectly appropriated from the balance amount of ₹36,54,124/-, since the said balance amount pertains solely to M/s. Suraj Trading Co. and the penalty imposed on M/s Sandhu Logistics should not be adjusted against it.

Record of personal Hearing and written submission of the Importer

28. Personal Hearing (PH) memos/letters were issued to the importer, with Document Identification Numbers (DINs), for appearing before the Adjudicating Authority on 26.06.2025 and 10.07.2025.

Ms. Modi Chahat Kuldeep, Advocate has attended the personal hearing on behalf of M/s. Sandhu Logistics on dated 10.07.2025. During the course of the hearing, Advocate submitted that *a Vakalatnama and an additional reply to the Show Cause Notice dated 09.11.2012 had already been submitted on behalf of the noticee. She further submitted that the main conspiracy in the case was allegedly orchestrated by Mr. Kirti Shah and Mr. Suraj Shah, partners of M/s Suraj Trading Co. It was contended that the allegations against M/s Sandhu Logistics are based solely on the statements of co-noticees, which have been considered as evidence without corroboration from any substantial or independent source. On being queried, the Advocate informed that an amount of ₹6.2 lakhs has been adjusted against the payment of ₹50 lakhs made by M/s Suraj Trading Co. in connection with the case. The Adjudicating Authority observed during the hearing that no duty has been paid by M/s Sandhu Logistics till date. In response, the Advocate confirmed the same.*

Vide the letter dated 09.07.2025 Ms. Modi Chahat Kuldeep of M/s Enact Legal on behalf of M/s Sandhu Logistics has submitted the following…

i) We submit that the allegations raised against the Noticee in the impugned SCN are unsustainable and the impugned Notice is liable to be quashed and set aside as herein after explained. It is submitted that the Noticee is falsely implicated in the present matter.

ii) The adjudicating authority has grossly erred by not taking into consideration of all the aspects of the case. The DRI has not appreciated the fact that Mr. Ajit Singh Sandhu (partner at the notice firm), who was primary person concerned with the transaction in question expired in the year 2011. Despite that this fact is recorded in the impugned order, the DRI has not appreciated the same. The adjudicating authority has grossly erred in continuing the proceeding against the noticee and not abating the same in view of the aforementioned fact. It is pertinent to note, adjudicating authority had abated the proceeding against the co-noticee Mr. Madan Lalwani of M/s M. Dharmadas & Co. who had expired in the year 2022. On this ground alone the impugned order must be set aside.

iii) That the adjudicating authority had failed to consider that the co-noticee, M/s Suraj Trading & Co. had approached Settlement Commission, and in pursuant thereof had deposited Rs 50, 00,000/- (Rupees Fifty Lakhs only). The differential duty demanded with penalties and interest thereon was adjusted out of the aforesaid deposit. It may be noted that the differential duty on Rs 6,27,938/- (Rupees Six lakh Twenty-Seven thousand Nine Hundred and Thirty-Eight only) on the BoE No. 803010 dt. 02.11.2007 was adjusted from the said deposit. However, ignoring this fact, the adjudicating authority has proceeded to demand such differential duty again from the noticee. It is submitted that such demand is unlawful and bad in law.

iv) That the Adjudicating authority has erred in holding that the noticee was involved in the alleged conspiracy. The appropriate customs duty leviable on the aforesaid crane cleared from Mumbai port was not levied at the time by reason of collusion, willful misstatement and suppression of facts regarding the actual value of the said goods by Shri Kirti Kothari, acting ill conspiracy with their overseas suppliers of the cranes, Shri Suresh Shah and Shri Madan Lalwani of M/s M. Dharmadas & Co. on whose say they had indulged in undervaluation and who had undertaken the job of clearance of the aforesaid crane from customs at such undervalued price. It may be noted that the noticee was not named to be part of the said alleged conspiracy. The noticee is alleged to be part of the said conspiracy on basis of the statements of co-noticees.

v) It is submitted that the Impugned SCN has implicated Noticee only on the basis of the alleged admission and on the basis of the statements of co-noticee. It is submitted that the Noticee is falsely implicated and involved by other persons, it is apparent from the manner and method and circumstances under which the Statements came to be recorded, that the said Statements are not true and voluntary statements. There is no evidence furnished which reflect that apart from the so-called persons statements anything else corroborate role of the Noticee.

vi) We wish to further submit that the allegations made in the SCN are based on merely uncorroborated and unsupported statements of the Co-noticee, which cannot be any basis to sustain such grave allegations. In support of this contention, we would like to rely on the following judgements:

Jagannath Premanth Vs. Commissioner Of Customs, Mumbai, 2006 (198) ELT 104 (Tri. - Del.)

Penalty- Misdeclaration of export goods - Penalty not imposable only on basis of statement of co-accused without any other corroborative evidence Co- accused himself accepted that he had forged the documents and vainly tried to implicate appellants-Reliance cannot be placed on such testimony of co- accused- Penalty set aside- Sections 108 and 114 of Customs Act, 1962.

Birendra Kumar Singh Vs. Commissioner Of Customs, Lucknow, 2006 (198) ELT 460(Tri.-Del)

Penalty - Imposition of -De facto ownership of vehicle carrying contraband goods- Registration certificate, insurance and other documents seized from vehicle, in the name of somebody else, other that appellant- Statement of co- accused driver without corroborating the evidence being not substantive evidence, no penalty imposable under 112 of Customs Act, 1962.

Evidence - Statement off co-accused - Without corroboration it cannot be considered as substantive evidence.

vii) It is submitted that the Special Bench of the Hon'ble Tribunal in the matter of Orient Enterprises, New Delhi V/s Collector of Customs, Cochin 1986 (23)ELT 50.7 Tribunal and of Mangilal bherumal Wadalmiya Jain V/ s. Collector of Customs(P), Mumbai 1999 (108) ELT 260 Tribunal in which it has been clarified that the statement even if recorded under Section 108 of the Customs Act, 1962 does not mean that it has to be ipso facto accepted as truthful. It is the only piece of evidence, which is relevant and admissible but its true value still requires to be gauged in conjunction with other evidence and attending circumstances to prove the fact in issue.

viii) That the Adjudicating authority has grossly erred in penalizing the present noticee only on basis of statements of the co-noticee. Nothing concrete and substantial is on record in regard to his involvement in the alleged fraudulent import/export of the subject goods. That this a rule of prudence as laid down by Hon'b1e Supreme Court in AIR 1964 SC 1184 and reaffirmed by various Hon'ble High Courts and also by the Customs, Excise and Service Tax Appellate Tribunals that no reliance can be place on the statement by other co-noticees.

ix) That the Adjudicating authority has not considered that Noticee only proceeded to clear the goods on the belief that the invoice other documents and the detailed contained therein, which were procured from the M/s Suraj Trading & Co. were true and correct. On this bona fide belief that the contents of such document were true, that the noticee filed the BoE No. 801030 dt. 02.11.2007. It is pertinent to note that the crane bought from M/s Suraj Trading & Co. was not in proper condition and the same was returned back to Mr. Suresh Shah in the name of M/s Symphony Crane Services, Mumbai. As mentioned above the conspiracy was hatched by M/s Suraj Trading & Co. and that the noticee had played no role in the same.

x) That the Adjudicating authority has grossly erred and not appreciated that there is nothing on record/evidence which would substantiate the allegation that the noticee was involved in the conspiracy expect for the statement of co-noticee. Without such evidences, the adjudicating authority has proceeded to penalize the noticee under various sections of the Customs Act, 1962.

xi) That, it is submitted that there is no material evidence on record that would substantiate the involvement of the Noticee in the alleged transaction except that of statement of the other parties/co-noticees regarding his involvement in the alleged fraudulent activity. Mere suspicion or allegation, cannot sustain the guilt against the Noticee. Therefore, the aforesaid used crane, imported and cleared in the name of the noticee, from Mumbai Customs on 19.11.2007 with a declared assessable value of Rs. 27,75,134/- (re-determined assessable value Rs. 48,00,000/- should not be confiscated under Section 111(m) of the Customs Act, 1962.

xii) Section 112(a) of the Act deals with the imposition of penalty in cases of improper importation of goods. The relevant extract is reproduced for your ease in reference;

"SECTION 112. Penalty for improper importation of good, 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,"
xiii) On the perusal of above provision, it is clear that imposition of penalty under Section 112(a) of the Act arises only where the imported goods are liable to be confiscated under Section 111 of the Act. However, the Impugned SCN has invoked Section 112(a) of the Act against the Noticee in relation to the import of crane which are subject to confiscation charges under Section 111 of the Act. Thus, invocation of Section 112 is assailable in the present case and hence, liable to be quashed on this ground alone.

xiv) It is further submitted that since there is no substantial evidence on record to establish mis-declaration on the part of the Noticee, penalty under Section 112 of the Act cannot be imposed. In support of this contention, we wish to rely upon following judgements;

- *In case of Hindustan Steel Ltd. v. State of Orissa, 1978 (2) E.L.T.159, it was held that;*

"Penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law and was guilty of conduct concamacious or dishonest or acted in conscious disregard of its obligation."
In case of Pramod Kaumar vs. Commissioner of Customs, 2018 (363) E.L.T. 411 (Tri. -Del), it was held that;
"In this case, the Department has not brought on any evidence to prove appellant's guilt in mis-declaring the goods. Rather, the submissions of the appellant recorded vide Paragraph 25(c) in the impugned order has been completely ignored and brushed aside by the original authority. Thus, in absence of any specific substantiation regarding the involvement of the appellant in fraudulent activities like misdeclaration in the present case, imposition of penalty, in our considered view, will not stand for the judicial scrutiny. Accordingly, penalty imposed on the appellant is set aside."

xv) Since the impugned SCN are liable to fail on the abovementioned grounds, we kindly request that the imposition of penalties under section l14A and 1 l4AA of the act deserves to be set aside against the notice and are also liable to fail.
xvi) In view of the aforesaid submissions, we submit that the Impugned SC dated 09.11.2012 is liable to be dropped and set aside.

xvii) It is also submitted that since the Impugned Order is liable to fail, the question of confiscation and imposing penalty upon the Noticee does not arise. Therefore, it is humbly urged that the proposed penalty may please be set aside.

xviii) The Noticee crave leave to add, alter, amend, or delete any of the above submissions and to make further submissions, if required.
xix) In the above circumstances, it is requested before Your Honour that the Show Cause Notice to be discharged and dropped
xx) A Vakalatnama duly executed by my client in my favour is annexed herewith.

DISCUSSION & FINDINGS:

29. I have carefully examined the subject Show Cause Notice No. DRI/MZU/B/Inv-16(3)/2010-11 dated 19.11.2012, Order-in-Original No. 43/ADC/VS/ADJ/2023-24 dated 27.06.2023, and Order-in-Appeal No. MUM-CUS-TK-IMP-185/2023-24/NCH dated

18.03.2024, along with all evidence, documents, written and oral submissions, and case laws relied upon. Accordingly, I proceed with the adjudication.

30. I note that Ms. Modi Chahat Kuldeep, Advocate of M/s Enact Legal, representing M/s Sandhu Logistics, submitted via letter dated 09.07.2025 that the allegations in the impugned Show Cause Notice (SCN) are unsustainable and liable to be quashed. She cited several case laws in support of her arguments.

31. However, I observe that this matter has already been adjudicated by the earlier adjudicating authority. Further, an appeal filed by M/s Sandhu Logistics, raising similar submissions, was rejected by the Hon'ble Commissioner (Appeals). Therefore, I refrain from revisiting the merits of the submissions made by Ms. Modi Chahat Kuldeep, Advocate.

32. I also refer to para 16 of the Order-in-Appeal, wherein the Hon'ble Commissioner (Appeals) observed:

"*Respondent's reply dated 14.03.2024 is not in consonance with the OA's view at para 24 (i). Further, from the impugned OIO I find that in absence of specific mention of payment of Govt. dues as appropriation for goods cleared vide B/E No. 803010 dated 02.11.2007 by the appellant and other co-noticees and in view of department's submission as mentioned above that there is no proof regarding appropriation / adjustment of confirmed demand against the appellant, it will be appropriate to re-examine and verify and confirm the payment and appropriation of dues by remanding the matter back to OA to pass specific order in this regard."*

33. Therefore, the issues before me to be decided in the instant case is as under:

- Re-examine, verify, and confirm the payment/appropriation of dues from the ₹50 lakhs deposited by M/s. Suraj Trading Co.
- Pass a specific order on whether the differential duty demand against M/s. Sandhu Logistics can be rightfully adjusted from the balance deposit.

34. I find that M/s. Suraj Trading Co. imported 15 cranes, and out of these 15 cranes, 04 cranes were cleared by them and the remaining 11 cranes (including the crane covered in the current case) were sold on high seas. During the investigation by DRI, M/s. Suraj Trading Co. deposited Rs. 50,00,000/- vide TR-6 Challan dated 16.12.2010. A Show Cause Notice demanding duty in respect of the 04 cranes imported and cleared in the name of M/s. Suraj Trading Co. was issued by DRI on 25.02.2012. Further, M/s. Suraj Trading Co. filed an application before the Settlement Commission accepting the duty demanded in the said SCN. The matter stands settled by the Hon'ble Settlement Commission vide their final order no. 56/FINAL ORDER/CUS/ISG/2013 dated 22.05.2013 ordering appropriation of (i) accepted duty Rs. 7,93,876/- (ii) accepted interest Rs. 3,42,000/- (iii) Redemption Fine Rs. 1,85,000/- and (iv) Penalty of Rs. 25,000/- (Total Rs. 13,45,876/-) against the advanced deposit of Rs. 50,00,000/- leaving balance advance deposit of Rs. 36,54,124/- by M/s. Suraj Trading Co.

35. I further find that the Settlement Commission's order dated 22.05.2013 does not cover the Bill of Entry No. 803010 dated 02.11.2007, cleared by M/s. Sandhu Logistics.

36. I find that Additional Director, DRI, Mumbai, vide letter dated 17.06.2025, observed that *the personal penalty of ₹50,000/- imposed on M/s. Sandhu Logistics under Section 114AA, as stated in Para 24(e) of OIO dated 27.06.2023, appears to be incorrectly appropriated from the balance amount of ₹36,54,124/-, since the said balance amount pertains solely to M/s. Suraj Trading Co. and the penalty imposed on M/s Sandhu Logistics should not be adjusted against it.*

From the above, it is clear that the balance amount of ₹36,54,124/- exclusively belongs to M/s. Suraj Trading Co. and the personal penalty of ₹50,000/- on M/s. Sandhu Logistics has been incorrectly adjusted from the balance amount of ₹36,54,124/-.

37. I also find, based on the DRI's letter, that M/s. Suraj Trading Co.'s disclaimer certificate dated 08.08.2012 explicitly states that the ₹50 lakhs deposit is exclusively for their own liabilities.

38. Further, I find that during the personal hearing on 10.07.2025, Ms. Modi Chahat Kuldeep, Advocate of M/s Sandhu Logistics, has confirmed that no duty has been paid by M/s Sandhu Logistics to date in the matter.

39. I also find that the Bills of Entry covered under the Settlement Commission's order dated 22.05.2013 do not include any of the Bills of Entry covered under the Order-in-Original dated 27.06.2023 pertaining to M/s. Sandhu Logistics."

40. Based on the facts discussed above, I find that the duty, interest, and penalty imposed on M/s. Sandhu Logistics were incorrectly adjusted from M/s. Suraj Trading Co.'s deposit.

Order

41. After careful consideration of the facts, records, and submissions made during the course of adjudication, I conclude as under:

i) The confirmed demand of ₹6,27,938/- (representing differential duty) plus applicable interest and penalty from M/s Sandhu Logistics appropriated from the deposit made by M/s. Suraj Trading Co.'s deposit (TR-6 Challan No. 241 dated 16.12.2010) is hereby revoked and set aside.

ii) M/s. Sandhu Logistics remains liable to pay the confirmed differential duty, interest, and penalty as per Order-in-Original No. 43/ADC/VS/ADJ/2023-24 dated 27.06.2023.

iii) All other findings and directions in the original Order-in-Original No. 43/ADC/VS/ADJ/2023-24 dated 27.06.2023, as modified by this order, shall remain in force.

iv) This Order is issued without any prejudice to any other action that may be taken against the said goods/notices and/or against any other firm/person's concern, under the provisions of the Customs Act, 1962 and or any other law for the time being in force in India

05/09/2025

(Arshdeep Singh)
Joint Commissioner of Customs,
Import-1, NCH, Mumbai

To,

1. M/s. Sandhu Logistics,
   Lall Baba Tube Complex,
   Burmamines, Jamshedpur.

Copy to:

1. The Commissioner of Customs, Import-I, NCH.
2. The Assistant Commissioner of Customs, Review Cell, Import-I, NCH.
3. The Assistant Commissioner of Customs, TRC, Import-I, NCH.
4. The Assistant Commissioner of Customs, Group - V, Import-I, NCH.
5. Superintendent, CHS, NCH, Mumbai..... to display on the Notice Board.
6. Office Copy