Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 222 of 2010 - DB

(Arising out of OIO-KDL/COMMR/29/09-10 dated 29.01.2010 passed by Commissioner of CUSTOMS-KANDLA)

Seaways Shipping Ltd **........Appellant**
2nd Floor, Plot No. 351,
Ward No. 12-b,GANDHIDHAM,
GUJARAT, SC

VERSUS

Commissioner of Customs-Kandla **......Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

WITH

Customs Appeal No. 249 of 2010 - DB

(Arising out of OIO-KDL/COMMR/29/09-10 dated 18.02.2010 passed by Commissioner of CUSTOMS-KANDLA)

K V M Arjun **........Appellant**
132, Ward 4-b,
Adipur, GANDHIDHAM,
GUJARAT

VERSUS

Commissioner of Customs-Kandla **......Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

APPEARANCE:
Shri S.J. Vyas (Advocate in C/249/2010 & Amicus Curiae in C/222/2010) for the Appellant
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10592-10593/2025

DATE OF HEARING: 25.04.2025
DATE OF DECISION:23.07.2025

SATENDRA VIKRAM SINGH

1.1 The appeal No. C/222/2010 and Appeal No. C/249/2010 both arising from the same order in original No. KDL/COMMR./29/09-10 dated 18.02.2010 passed by the Commissioner of Customs- Kandla. The facts of the matter are that the DRI officers investigated a case against M/s.BV & Co. Surat and M/s. Amit Corporation, Surat for export of **"General Use Pins"** by mis-declaring the same as **"Cycle Parts-Cotter Pins"** and also declaring the higher value of the consignment with intent to avail higher export benefit in the form of duty drawback. During the investigation, the Customs Officers recorded the statements of the proprietor of M/s.BV & Co., statements of Shri Vishal Girishkumar Purohit, statements of Shri Brijesh Kanjibhai Kevadiya, statements of Shri K.V.M. Arjun, AGM (Finance & Accounts) of M/s. Seaways Shipping Ltd., Gandhidham, statements of Shri Amit D Patel, Proprietor of M/s. Amit Corporation, statement of Shri Afzal Ghadiali and statements of other concerned persons.

1.2 After concluding the investigation, DRI issued show cause notice dated 13.10.2009 to Shri Brijesh Kanjibhai Kevadiya, Shri Afzal Ghadiali and M/s. Amit Corporation proposing confiscation of the seized goods, rejection of duty drawback in respect of present as well as past exports and imposition of penalty. They also proposed penalty on M/s. Seaways Shipping Ltd., Gandhidham and their AGM (Finance and Accounts) Shri K.V.M. Arjun, under Section 114 (iii) of the Customs Act, 1962.

1.3 The above show cause notice was adjudicated by the learned Commissioner wherein, he ordered confiscation of the seized goods with option to Shri Afzal Ghadiali to pay the redemption fine of Rs.2.6 Lakhs, rejection of duty drawback of Rs. 12,80,508/-, rejection of drawback claim of Rs.12,80,370/- in respect of past exports, recovery of duty drawback of Rs.38,22,900/- already sanctioned to M/s. BV & Co in respect of past exports, rejection of duty drawback of Rs.12,78,558/- and also imposition of penalty of Rs.1 Cr. on Shri Afzal Ghadiali, penalty of Rs. 75 Lakhs on Shri Brijesh Kanjibhai Kevadiya, penalty of Rs. 50 Lakhs on Shri Vishal Purohit, (proprietor of M/s. BV & Co.), penalty of Rs. 25 Lakhs on Shri Amit Patel, (proprietor of M/s. Amit Corporation), penalty of Rs.75 Lakhs on Shri K.V.M. Arjun (AGM Finance & Accounts of CHA firm) and separate penalty of Rs.10 Lakhs on CHA M/s. Seaways Shipping Ltd., Gandhidham all under Section 114 (iii) of the

Customs Act, 1962. Aggrieved with the said order, Shri K.V.M. Arjun and M/s. Seaways Shipping Ltd., Gandhidham have filed the present appeals.

2.1 Shri K.V.M. Arjun mentioned the following grounds in his appeal No.C/249/2010.

- Penalty of Rs.75 Lakhs has been imposed on him by the learned adjudicating authority by observing that he had received Rs. 11 to 12 Lakhs from Shri Afzal and also agreed in his statements dated 26.06.2009. The above order is bad in law and liable to be set aside as the department has not produced any evidence to prove his involvement in the matter.
- He is an employee of the CHA firm M/s. Seaways Shipping Ltd. and looks after the work of account, finance and liasoning with the clients. He did not prepare relevant export documents nor was involved in clearance of the said export consignments. Therefore, provisions of Section 114 (iii) of the Customs Act, 1962 are not attracted against him and consequently, he is not liable to any penalty. The penalty imposed vide impugned order is without producing any positive evidence against him as being an employee of the CHA firm he is undertaking the work as allocated by his employer.

2.2 M/s. Seaways Shipping Ltd., in their appeal No.C/222/2010, took the following grounds:-

- Three charges have been made against the CHA in the show cause notice namely- (i) Captain Siddharth Shukla of M/s. Seaway Shipping Ltd. has knowingly and deliberately abetted in effecting fraudulent exports by others; (ii) CHA has mis-declared the quantity of export goods in S/Bs especially when it was in his knowledge that some quantity was lost at the time of palletalization and; (iii) Captain Siddharth Shukla and Shri K.V.M. Arjun failed in their obligations with regard to regulation, 13(a), (d) and (e) of CHALR (Custom House Agent Licensing Regulations)- 2004

- The show cause notice as well as the Adjudication order acknowledges that Shri K.V.M. Arjun has acted in his individual capacity. The adjudicating authority has exonerated captain Shukla against charge of abetment in para 20 of his order. On second allegation that quantity was mis-declared, in the S/Bs, he held that there is no basis for this allegation.
- Regarding failure to fulfill obligations under CHALR-2004, Commissioner has failed to make any clear-cut case citing exact omission or commission in his order as he has mentioned that Captain Shukla met the exporters only once regarding his filing against requirement of an authorization by the exporter. In several cases, Tribunal has held that filing documents without separate authorization is not a breach of regulation 13(a) of the CHALR- 2004. Prescribed shipping bills and forms themselves have provision for signing the declaration by the importer/ exporter and the CHA both. Once signatures are appended on the bills of entry or the shipping bill by both, it should be taken as substantive compliance of the provisions.
- At the time of clearance of consignment, Customs Authority did not express any doubt on the CHA firm. The Tribunal in the case of M/s. Trinity Forwarders has held that the shipping bills signed by the exporters is implicit authorization when the department had no case that the CHA was not employed by the exporter.
- The CHA obtained from the party the Pan copy, IEC certificate and certificate from the bankers that they are proper account holders etc. These documents are issued after doing lot of verifications. As per KYC norms ordered by RBI and the Home Ministry, detailed check is undertaken by the bank before opening account in a bank. A poor CHA

cannot do more due diligence than these big legally empowered authorities.

- Verification of antecedents etc. were brought in the regulation only on 08.04.2010 by Notification No.30/2010-Cus. whereunder, regulation 13(o) was added. Prior to this (i.e. period involved in this case), requirement of independent verification was not there.
- Regulation 13(b) is meant to advise the Importer/ Exporter correctly and there is nothing on record to suggest otherwise.
- The learned Adjudicating authority mentions in his order that had CHA made any serious efforts to find out the correct position of Shri Afzal Ghadiali and Shri Brijesh Kanjibhai Kevadiya, it would have certainly given them the right signals and would have surely discouraged them from committing the wrong. It is impossible to understand as to how the adjudicating authority came to view that it would appear to Captain Shukla that those were not the owners of the firms.

In view of the above, CHA firm requested for setting aside penalty imposed on them under Section 114 (iii) of the Customs Act, 1962 vide impugned order Adjudicating Authority.

3. In the appeal filed by M/s. Seaways Shipping Limited, no one was coming for representing the appellant. Therefore, Shri S. J. Vyas, Advocate who is arguing counsel for Shri K.V.M. Arjun was requested to be amicus curiae in the case of the CHA which he has gladly accepted.

4.1 During arguments, Learned Advocate mentioned that the DRI has no authority to issue show cause notice in the light of judgment of Hon'ble Supreme Court in the case of Canon India as only proper officer can assess the export goods as per Section 50 of the Customs Act, 1962. Penalty under Section 114 (iii) is leviable only on any person who, in relation to any goods does or omits to do any act which act or omission could render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act. The allegations made against CHA like not obtaining authorization or not showing diligence in identity of the exporters is not the reason for rendering the goods liable to confiscation. KYC norms were inserted in the regulations only w.e.f 08.04.2010 by Notification No.30/2010 whereas, the dispute in this case relates to year 2009. He further argued that the shipping bills were signed by both the exporters as well as the CHA which is deemed authorisation. He placed reliance on the following decisions:-

4.2 As regards penalty on Shri KVM Arjun, learned Advocate mentioned that his client has been imposed penalty of Rs.75 Lakhs under Section 114 (iii) of the Customs Act,1962 who is an employee of the CHA firm. The lower authorities have taken two grounds for imposition of penalty on Shri him, firstly, he gave the idea of exporting cycle parts to claim higher drawback and secondly, received an amount of Rs.10-11 Lakhs out of the drawback amount. While questioning the authority of DRI to issue show cause notice, learned Advocate argued that the customs officer has no power to reassess the exported goods. He cited the decision of Hon'ble Punjab and Haryana High Court in the case of Jairath International and anr. and Rajesh Dhanda vs. Union of India and others 2019 (10) TMI 642 and Famina Knit Fabs through its partners vs. Union of India and ors. 2019 (9) TMI 970. He argued that his client has been penalized without any evidence of his participation in the actual act of export. Having knowledge is not the same as abetment. The entire case of the department is based on the statements of the co-accused without cross examination. He also pleaded that the amount of penalty is exorbitant and disproportionate.

5. The learned AR reiterated the findings of the lower authorities and mentioned that both exporters were non-existent at the declared addresses. Earlier also, they had exported similar consignments and availed drawback benefit. Highlighting the statements of Captain Siddharth Shukla, Brach head of the CHA company, Shri Vishal Purohit, Shri Brijesh Kevadiya, Shri K.V.M.

Arjun, Shri Amit D Patel and Shri Afzal Ghadiali, he mentioned that the CHA firm as well as Shri KVM Arjun (AGM of CHA firm) have assisted in fraudulent export by overvaluing goods to avail higher drawback. Both the appellants neither disputed the evidences nor retracted their statements recorded by the customs authorities during investigation. The lower authority has imposed justifiable penalty on both of them by elaborating their role and therefore, both the appeals be dismissed.

6.1 We have heard the rival submissions. M/s. Seaways Shipping Ltd (CHA) and it's AGM Shri K.V.M. Arjun have filed present appeals against imposition of penalty on them by the Commissioner of Customs, Kandla vide impugned order dated 29.01.2010. Both appeals originate from the same order which also involves two exporters (i.e. M/s. Amit Corporation & M/s.BV & Co.), Shri Brijesh Kanjibhai Kevadiya and Shri Afzal Ghadiali. The above two exporters exported highly overvalued "pins of general" use by declaring these as cycle parts (i.e. Cotter Pins) with the help of present appellants. The learned Commissioner relied on the statements of the concerned persons including the present appellants to impose a penalty of Rs.10 Lakhs on the CHA firm (Appellant No.1) and penalty of Rs.75 Lakhs on Shri K.V.M Arjun, under Section 114(iii) of the Customs Act, 1962.

6.2 We find that one of the contention of Learned Advocate is that DRI officer is not a proper officer to issue the SCN. He cites the decision in Canon India case delivered in 2021. We however find that Hon'ble Apex Court in it's review order reported at 2024 (390) E.L.T. 545 (SC) has held that DRI officer is a proper officer to issue the SCN. Thus, the basic objection of Learned Advocate is not correct. We further observe that the learned Adjudicating Authority in para-10.6.8 of the impugned order quotes para 23 of the SCN which alleges that *"Shri Arjun has acted in his individual capacity and conspired with Shri Brijesh and Shri Afzal to export the said pins of general use by declaring the same as Cycle Parts-Cotter Pins and overvaluing the same* *with an intention to avail higher export benefit in the form of duty drawback for which he was paid hefty amount."* He also concludes that there is nothing in the statements of Captain Siddharth Shukla, (Branch Head of the CHA firm) that he was aware of or was party to the machinations of Shri K.V.M.Arjun which ranged from advising the persons posing as representative of the exporting firms to export of overvalued pins to collect extra amounts for facilitating exports etc. We find that on one hand, the Learned Commissioner holds that the charges of abetment levied against CHA is not found sustainable, still he imposes penalty on the CHA under Section 114 (iii) of the Customs Act,1962. Section 114 of the Customs Act, 1962 is reproduced as under,

> *"Any person who in relation to any goods, does or omits to do any act, which act or omission would render such goods liable to such confiscation under Section 113, or abets the doing or omission of such act, shall be liable……"*
>
> *(i)……………………………………..*
>
> *(ii) ……………………………………..*
>
> *(iii) in the case of any other goods, to a a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater."*

He also dismissed the charges made in the SCN that CHA has failed to approach the Department for carrying out amendment in shipping bill as actual weight was found to be 1541.300 Kg as against declared weight of 1596 Kg by concluding that "merely on account of the fact that some variation was noticed in the weight declared in the shipping bill, it would not be proper to lay the blame on CHA and allege failure on his part to approach the Department for carrying out amendment of shipping bill with regard to weight." Apparently, the difference in weight is due to spillage of cotter pins during palletization. He imposed penalty on the CHA under Section 114 (iii) of the Customs Act holding that they failed to comply with regulation 13 (a) of

CHA Licensing Regulation. We find that for violation of CHA Regulations, the CHA should have been proceeded against under the very same regulations which are independent of the provisions of the Customs Act. This apparently has not been done for reasons best known to the department. We therefore hold that M/s. Seaways Shipping Limited are not liable for penalty under Section 114 (iii) of the Customs Act, 1962 and accordingly, set aside the said penalty imposed on the CHA.

6.3 Regarding penalty of Rs.75 Lakhs imposed on Shri KVM Arjun, learned Adjudicating Authority has relied on the statements dt. 24.08.2009 of Shri Brijesh K. Kevadiya, statements dt. 05.10.2009 of Shri Afzal Ghadiali who stated that Shri K.V.M. Arjun gave him the idea to export cycle parts i.e. cotter pins under duty drawback scheme by overvaluing the goods in the shipping bills. They both accepted to have given Shri Arjun an amount of Rs.11-12 Lakhs over and above the CHA fee in cash through local Angadias. The appellant Shri K.V.M. Arjun in his statements dated 26.08.2009 has accepted these assertions wherein, he clearly admitted to have received extra amount over and above CHA fees; that he never interacted with the owners of the export firms and also that he did not receive any authorization from the two firms and cleared the export goods on verbal communications. The records also show that both the exporting firms were not in existence at the given/ declared address. Shri KVM Arjun has neither retracted his statements dt.26.08.2009 nor sought for any cross examination of the witnesses. Therefore, his statements becomes admission of guilt and establishes his connivance with Shri Afzal Gadhiali in the said Act of fraudulent export rendering the goods liable to confiscation under Section 113 of the Customs

Act, 1962. The arguments taken by, Shri KVM Arjun that he was looking after the work of account, finance and liasoning with clients as an employee of the CHA firm are not convincing in the light of evidences relied upon by the department and therefore, we hold that he is liable to penalty under Section 114(iii) of the Customs Act, 1962. Considering quantum of undue benefits availed by Shri KVM Arjun out of the alleged fraudulent exports, we are of the view that penalty imposed on him under the said Section is on higher side which should have been commensurate to the offence. Accordingly, we reduce the penalty on Shri KVM Arjun from Rs.75 Lakhs to Rs.15 Lakhs under Section 114 (iii) of the Customs Act, 1962. The impugned order is modified to the extent of setting aside penalty imposed on M/s. Seaways Shipping Limited and reducing the penalty on Shri KVM Arjun, AGM Finance of the CHA to Rs.15 Lakhs.

7. The appeals are disposed of accordingly.

(Pronounced in the open court on 23.07.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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